



C.M.A.No.2998 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2998 of 2024

Kumaresan

...Appellant

Vs.

1. Gowri

2. The Divisional Manager,
Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Towers, Nungambakkam,
Chennai.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, seeking to enhance and to set aside the award dated 05.01.2023 made in M.A.C.T.O.P.No.1731 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant : M/s.A.Subadra

For Respondents : Mr.J.Michael Visuvasam, for R2
: Notice dispensed with, for R1



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JUDGMENT

WEB COPY This Civil Miscellaneous appeal has been filed challenging the award and decree passed in M.A.C.T.O.P.No.1731 of 2017 dated 05.01.2023 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

2. Since the 1st respondent remained exparte before the tribunal, notice to the 1st respondent is dispensed with.

3. The case of the claimant is that, on 08.06.2016 at about 7.00 am., when the appellant was riding his two wheeler bearing Regn.No.TN-25-AF-7308 along with two pillion riders on the extreme left side of the Chengam to Krishnagiri road, at that time, a Maruti Omni car bearing Regn.No.KA-03-MH-1658 owned by the 1st respondent insured with the 2nd respondent driven by its driven in a rash and negligent manner came in the opposite direction and dashed against the appellant's two wheeler, due to which, the appellant and the two pillion riders sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition



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claiming a compensation of Rs.7,00,000/-. Before the tribunal, the claimant examined three witnesses viz., P.W.1 to P.W.3 and marked exhibits P.1 to P.8 and on the side of respondents, three witnesses viz., R.W.1 to R.W.3 were examined and exhibits R.1 to R.10 were marked and Disability certificate was marked as court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent, however, fixed a contributory negligence of 15% on the part of the claimant and awarded a meagre compensation of Rs.2,37,000/-. Aggrieved with the said order, the appellant has come up with this appeal.

4. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent, for which, the FIR came to registered as against the 1st respondent's driver. Further, at the time of accident, the appellant was aged about 35 years and was working as a Porterage and was earning a sum of Rs.25,000/- and due to the injuries sustained by him in the



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above said accident, the appellant is unable to continue his avocation which he was doing earlier. However, the tribunal had miserably failed to consider the same and had awarded a meagre compensation of Rs.2,37,000/-. Further, the tribunal had fixed a contributory negligence of 15% on the part of the appellant for not possessing a valid license, which is very high and mere non possession of driving license cannot be taken to mean that the contribution is highly on the side of the appellant/claimant. At best, not holding of valid driving license can only result in a contributory negligence of 5% and fixing 15% contributory negligence is perverse. Accordingly, she prayed for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 2nd respondent submitted that, at the time of accident, three persons have travelled in the motorcycle in which the appellant travelled, which is a clear violation of policy condition and the same is also strictly prohibited under the Motor Vehicles Act. Further, the appellant, who was driving the two wheeler at the time of accident had no valid driving license. Thereby, the tribunal, after careful consideration of all the above said facts had rightly



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fixed 15% contributory negligence on the part of the appellant, and the same does not warrant any interference of this Court. Further, the compensation awarded by the tribunal is already on the higher side and the same does not require any further enhancement. Accordingly, he prayed for dismissal of this appeal.

6. Heard learned counsel on either side and perused the material documents placed on record.

7. The factum and manner of the accident is not in dispute and therefore, this Court is not entering into the said aspect. Though it is claimed by the learned counsel for the appellant that due to the above said accident, the appellant sustained multiple fracture injuries and the compensation awarded by the tribunal under the heads Pain and suffering and Extra nourishment are on the lower side and no compensation has been awarded under the head Medical expenditures, however, a perusal of the impugned award reveals that the tribunal had awarded a sum of Rs.50,000/- under the head Loss of Amenities, which is not sustainable and the same has



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to be set aside. However, since, giving under one head and reducing under the other head would result in the amount to be awarded to be the same and no useful purpose would be served in modifying the compensation under the heads, while the compensation amount would remain the same, which would be nothing but an exercise in futility, therefore, this Court is not embarking upon the said modification, but suffice to confirm the compensation awarded by the Tribunal.

8. Insofar as the negligence fixed by the tribunal is concerned, though it is claimed by the learned counsel for the appellant that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent and the same is evident from the FIR, Ex.P1, however, it is evident from records that three persons have travelled in the motorcycle in which the appellant travelled at the time of accident and in addition to that, the appellant, who was driving the two wheeler at the time of accident did not possess valid driving license, which is a clear violation of policy conditions, and thereby, the Tribunal as per settled ratio in a catena of decisions, fixed a contributory negligence of 15% on the part of



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the appellant, in which this Court does not find any fault with and thereby, the same is confirmed.

9. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal and the 2nd respondent-insurance company is directed to deposit the compensation of **Rs.2,37,000/-** awarded by the tribunal to the credit of M.A.C.T.O.P.No.1731 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the claimant directly to his bank accounts through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal.

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skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

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M.DHANDAPANI, J.

skt

To:

1. The Motor Accidents Claims Tribunal, Special Sub Court,
Tiruvannamalai.
2. The Section Officer,
V.R.Section, High Court, Madras.

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