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CMA NO.2799 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.2799 OF 2022

Madhu @ Madhaiyan

...

Appellant /
Petitioner

Versus

1.A.L.Ramasamy
2.Mathiazhagu

3.The New India Assurance Company Limited
17-B, Gandhi Road, LIC of India,
North Branch, Hasthampatty,
Salem – 636 007.

...

Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award dated 30.07.2021 made in M.C.O.P.No.179 of 2017 on the file of the Motor Accident Claims Tribunal – Chief Judicial Magistrate, Salem.

For Appellant

:

Ms.D.Sathya
for Ms.Zeenath Begum



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For Respondents 1&2 : Ms.Nair P. Sridevi Pradeep
For Respondent 3 : Ms.C.Sithi Fathima
for M/s.C.Sangamithirai

J U D G M E N T

Dissatisfied with the Award dated July 30, 2021 passed by the 'Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Salem' [henceforth 'Tribunal' for brevity] in M.C.O.P.No.179 of 2017, the petitioner has preferred this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988.

2.For the sake of convenience, the parties will henceforth be referred to as per their array before the Tribunal.

Petitioner's case

3.The case of the petitioner is that on February 19, 2017 at about 02.00 p.m., while the petitioner was waiting near Center Median to cross the road in his TVS XL Heavy Duty Motorcycle bearing Registration No.TN90-9426, a Yamaha Motorcycle bearing Registration No.TN30-BF-4990, driven



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by the second respondent at a high speed without following traffic rules came in a rash and negligent manner, collided with the petitioner's vehicle and due to the sudden impact of the accident, the petitioner sustained injuries. The petitioner's vehicle also sustained damages. The petitioner was initially admitted to Universal Cancer Hospital for first-aid and thereafter, he was taken to Government Hospital, Salem and then, to Ganga Medical Care Centre Hospital, Coimbatore where he was admitted and treated as inpatient and discharged on March 6, 2017. Subsequently, an FIR in Crime No.160 of 2017 was registered against the petitioner. At the time of the accident, the petitioner was 52 years old and was working as a Plumber. Further, he was earning a sum of Rs.26,000/- per month. According to the petitioner, the second respondent is responsible for the accident. Therefore, the petitioner claimed a sum of Rs.10,00,000/- as compensation from the respondents.

First and Second Respondents' case

4.The first respondent is the father of the second respondent and



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he is the owner of the Yamaha Motorcycle. The first and second respondents remained absent and were set *ex-parte* before the Tribunal.

Third Respondent's case

5.The third respondent, who is the insurer of the first respondent's vehicle filed a counter, wherein it has been stated that the accident occurred due to the rash and negligent riding of the petitioner; that the petitioner suddenly crossed the centre median and invited the accident; that a case in Crime No.160 of 2017 was registered against the petitioner; that final report was filed against the petitioner under Sections 279 and 337 of the Indian Penal Code, 1860 read with Sections 181(3) and 196 of the Motor Vehicles Act, 1988; that the petitioner is a tort-feasor and hence, he is not entitled to get any compensation; that at the time of accident, the petitioner was not wearing Helmet and did not have a valid Driving License. Accordingly, the third respondent prayed to dismiss the Original Petition.

Witnesses and Exhibits

6.Before the Tribunal, on the side of the petitioner, the petitioner



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was examined as P.W.1 and Ex-P.1 to Ex-P.13 were marked. The Disability Certificate and X-Rays of the petitioner were marked as Ex-X.1 and Ex-X.2 respectively. On the side of the respondents, one Thiru. Ramamoorthy, Special Sub Inspector, TIW Salem City Police Station was examined as R.W.1 and the second respondent was examined as R.W.2 and one Thiru. Karthikeyan, Assistant attached to the third respondent—Insurance Company was examined as R.W.3 and Ex-R.1 to Ex-R.4 were marked.

Tribunal's findings

7.After hearing the petitioner and the third respondent and after considering the materials available on record, the Tribunal found that the petitioner, and the rider of the first respondent's vehicle i.e., the second respondent are equally responsible for the accident and fixed negligence on both in the ratio of 50 : 50. Accordingly, the Tribunal awarded a total compensation of Rs.2,85,781/-, out of which, the petitioner is entitled to get compensation of Rs.1,42,891/- as 50% of the Award amount.

8.Feeing aggrieved with the said Award, the petitioner has preferred this Civil Miscellaneous Appeal.



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Arguments

9. Heard the submissions made on either side.

10. Learned counsel appearing for the petitioner submits that the petitioner was a Plumber and was earning a sum of Rs.26,000/- per month; that though a criminal case had been registered against him, the same ended in acquittal as there was no eye witness for the said accident; that the judgment rendered in the criminal case would show that petitioner was not responsible for the accident; that the accident occurred only due to the rash and negligent riding of the rider of the first respondent's vehicle; that the Tribunal has not considered the evidence and nature of the injuries sustained by the petitioner and erroneously apportioned compensation in the ratio of 50 : 50. Accordingly, she prayed to allow the Civil Miscellaneous Appeal.

10.1. Per contra, learned counsel appearing for respondents 1 and 2 submits that the accident occurred only due to the rash and negligent riding



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of the petitioner. The Police has also registered a case only against the petitioner. Learned counsel further submits that the Tribunal is right in fixing the liability in the ratio of 50:50. Accordingly, she prayed to dismiss the Civil Miscellaneous Appeal.

10.2.Learned counsel appearing for the third respondent – Insurance Company submits that the Police registered a case in Crime No.160 of 2017 and filed charge sheet against the petitioner. Though the criminal case ended in acquittal, the petitioner has not proved that the second respondent caused the accident. However, the learned counsel submits that the Tribunal is right in fixing the liability. Accordingly, she prays to sustain the Tribunal's Award.

Point for consideration

11.This Court has considered the submissions made on either side and perused the materials available on record.

12.The point that arises for consideration in this appeal is whether the petitioner is responsible for the accident or the second respondent



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is responsible for the accident?

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Discussion and Decision

13.Factum of accident is admitted. The petitioner - P.W.1 deposed that on February 19, 2017 at about 02.00 p.m., when he was waiting in his TVS XL Heavy Duty Motorcycle bearing Registration No.TN90-9426 near the Center Median to cross the road, the second respondent, who drove his vehicle bearing Registration No.TN30-BF-4990 in a rash and negligent manner dashed against the petitioner's vehicle and thereby, caused injuries to the petitioner. Admittedly, the Police registered a case against the petitioner and filed charge sheet against him. The learned Judicial Magistrate acquitted the petitioner by observing that no eye witness was available in this case. Hence, the Criminal Court's judgment would not help both the petitioner and the respondents. The Criminal Court judgment has been marked as Ex-P.12. The second respondent was examined as R.W.2. On a cumulative perusal of the Criminal Court's judgment and the evidence of P.W.1 and R.W.2, this Court is of the considered view that both the petitioner and the second



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respondent are responsible for the accident. However, this Court holds that the petitioner is 25% responsible for the accident while the second respondent is 75% responsible for the accident. Hence, it is just and fair to apportion the award amount accordingly. The point that arises for consideration in this appeal is answered accordingly.

14. According to the petitioner, he was a Plumber and earned a sum of Rs.26,000/- per month. It is true that no documents were produced by the petitioner to substantiate his claim. However, considering the age and also the size of the family, the petitioner would have earned an income not less than Rs.15,000/- per month. Furthermore, the petitioner was admitted in Ganga Hospital, Coimbatore from February 19, 2017 to February 25, 2017. Considering the period of treatment and also the nature of the injuries, this Court modifies the Tribunal's Award as hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Pain and Suffering	Rs.50,000.00
2	Loss of convenience	Rs.50,000.00
3	Medical Expenses	Rs.99,781.00
4	Attender charges	Rs,10,000.00



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
5	Temporary loss of income (Rs.15,000 X 6)	Rs.90,000.00
6	Transportation charges	Rs.15,000.00
7	Extra Nourishment	Rs.20,000.00
	Total	Rs.3,34,781.00

15.As stated supra, the petitioner is 25% responsible for the accident while the second respondent is 75% responsible for the accident. Hence, the respondents are liable to pay 75% of the total compensation i.e., Rs.2,51,085/- (Rupees Two Lakh Fifty One Thousand and Eighty Five Only) to the petitioner.

Conclusion

16.Accordingly, the third respondent – Insurance Company is directed to deposit the amount now enhanced by this Court viz., Rs.2,51,085/- (Rupees Two Lakh Fifty One Thousand and Eighty Five Only) with interest at 7.5% per annum from the date of claim petition till the date of deposit / realization, less the amount already deposited, if any, to the credit of M.C.O.P.No.179 of 2017 on the file of the Tribunal, within a period of three months from the date of receipt of a copy of this judgment. On such deposit



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being made, the appellant / petitioner is permitted to withdraw the same as per law.

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17.This Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
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