



C.M.A.No.2348 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 23.01.2024	Pronounced on 31.01.2024
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2348 of 2021

Gopi @ Gopinath (29 years)
S/o.Shanmugam
Old Sandaipettai, Ernapuram Post
Magudanchavadi, Sankari Taluk
Salem District

... Appellant

Vs.

1.Ramesh
S/o.Rajendran
No.5/217, Kottaimedu
Magudanchavadi Post
Sankari Taluk, Salem District

2.National Insurance Company Ltd.,
3rd Floor, Maruthi Complex
F-215, Omalur Main Road
P.B.No.27, Salem 636 004

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.07.2020 made in MCOP No.276 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Sankari.

For Appellant : Mr.S.P.Yuaraj

For Respondents : Mr.S.Arun Kumar (for R2)
R1-No appearance



C.M.A.No.2348 of 2021

WEB COPY

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 08.07.2020 made in MCOP No.276 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Sankari.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed MCOP No.276 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Sankari, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 20.03.2011. The Tribunal has awarded a sum of Rs.1,45,000/- with interest at the rate of 7.5%. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.

4.The factum of the accident, manner of the accident are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court in



C.M.A.No.2348 of 2021

this regard are hereby confirmed.

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5. During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P.1 to Ex.P.9 were marked and on the side of the Respondents, RW1 was examined and Ex.C1 & Ex.C2 were marked as Court documents.

6. Heard the learned counsel for the claim Petitioner and learned counsel for the Insurance Company.

7. Learned counsel for the claim Petitioner would contend that the injured was a pillion rider of the vehicle and the Tribunal has fixed contributory negligence at 10% on the part of the rider of the vehicle and the Tribunal has not awarded any compensation for loss of income for the treatment period.

8. Learned counsel for the claim Petitioner specifically raised a plea that in the absence of any positive evidence to show that the rider was at the drunken stage, the Tribunal has committed error in fixing 10% contributory negligence on the rider of the two wheeler.



C.M.A.No.2348 of 2021

WEB COPY

9.After perusing the evidence of PW1 & PW2, RW1 & RW2 and Ex.P5/rough sketch, I find that RW1 is an Administrative Officer, who deposed that at the time of the accident rider of the two wheeler was drunken stage and during his cross examination, he deposed that based on the medical records only he deposed that the rider of the two wheeler was under the influence of alcohol at the time of the accident. But there is no document to show the alleged fact that the rider was under the influence of alcohol. In the absence of any positive evidence, the Tribunal ought not to have fixed the contributory negligence on the part of the rider and RW1 is not the occurrence witness, he is only an administrative officer and hence in this view of the matter, I find that the alleged fact that the rider of the two wheeler was under the influence of alcohol is not supported by medical evidence and the said plea is vacated and entire liability is fixed on the Insurance Company.

10.On the point of quantum of compensation, I find that based upon medical records, 25% disability has been fixed by the Tribunal and taking into consideration the date of Accident (i.e.,) 20.03.2011, Rs.3,000/- has been fixed per percentage and a sum of Rs.75,000/- was granted by the Tribunal towards disability, which is just and fair. Due to the accident and nature of injuries and



C.M.A.No.2348 of 2021

the disability resulted thereon, the claim Petitioner could not went for work for more than four months and as per the pleadings, the injured/claim Petitioner was doing lorry body building work and earned Rs.7,000/- per month. In the absence of any contra evidence, this Court awards a sum of Rs.28,000/- (Rs.7,000/- x 4) towards loss of income.

11.The Tribunal's award on other heads are just and fair, which does not require any interference of this Court. Accordingly, the enhanced award amount is re-assessed as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Disability (25 % x Rs.3,000/-)	75000
2	Loss of income	28000
3	Transportation charges	5000
4	Nutrition and extra nourishment	10000
5	Future medical expenses	20000
6	Pain and sufferings	50000
	Total	188000

The Tribunal has awarded 7.5 % interest, the same is also hereby confirmed.

12.In total, the claim Petitioner is entitled to a sum of Rs.1,88,000/- (Rupees one lakh and eighty eight thousand only).



C.M.A.No.2348 of 2021

WEB COPY

13.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.1,45,000/- to Rs.1,88,000/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.



C.M.A.No.2348 of 2021

31.01.2024

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Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

sai

To
The Sub Judge,
Sankari.



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C.M.A.No.2348 of 2021

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.2348 of 2021

Dated: 31.01.2024