



C.M.A. No. 3472 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.3472 of 2021

Dhanapal

... Appellant / Petitioner

Vs.

1. K.K.P. Fine linen Private Limited,
No.88, Salem Road,
Namakkal taluk & district – 637001.

2. M/s. United India Insurance Co. Ltd.,
No.2, Bhuvaneswari complex,
Dr. Sankaran road,
Namakkal 637001.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 03.03.2021 passed in M.C.O.P. No. 840 of 2018 on the file of the Motor Accidents Claims Tribunal / Sessions (Fast Track Mahila) Court, Namakkal.

For Appellant : M/s. C. Thangaraju

For R1 : No Appearance

For R2 : M/s. D. Bhaskaran



C.M.A. No. 3472 of 2021

JUDGMENT

WEB COPY

This Civil Miscellaneous appeal has been filed by the claimant challenging the contributory negligence fixed and also for enhancement of compensation awarded in M.C.O.P. No. 840 of 2018, dated 03.03.2021 on the file of the Motor Accidents Claims Tribunal / Sessions (Fast Track Mahila) Court, Namakkal.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 03.10.2017, at about 5:50 AM, the claimant was riding a Hero Passion Pro bike bearing Registration No.TN-88-B-6073, while he reached near Perumal Koil at Mudalaipatti in Namakkal to Salem Main road, a Ashok Leyland lorry bearing Registration No.TN-88-B-7754, driven by its driver in a rash and negligent manner, came behind the claimant's two wheeler and dashed, thereby causing grievous injuries to the claimant. A criminal case was registered against the driver of the lorry in Cr.No.359/2017 Under section 279 and 338 of IPC on the file of



C.M.A. No. 3472 of 2021

Nallipalayam Police station. For the injuries sustained, the claimant has filed claim petition against the respondents, who are the owner and insurer of the Ashok Leyland lorry bearing Registration No.TN-88-B-7754 seeking compensation for a sum of Rs.20,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the lorry has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the lorry filed counter denying the manner in which the accident has taken place and contended that the claimant has also contributed to the accident by not possessing valid driving licence and was not wearing helmet at the time of accident and the compensation claimed is also highly excessive.

5. The Tribunal after considering the evidence placed on record has held that the claimant has also contributed to the accident to the extent of 10% and further quantified and awarded compensation for a sum of Rs.14,30,000/- (after deducting contributory negligence of 10%) along with interest @ 7.5% per annum from the date of filing petition till the date of



realization. The Tribunal has also fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant.

6. Aggrieved over the award, the claimant has come forward with this appeal challenging the contributory negligence attributed on him and also for enhancement of compensation. The respondents have not preferred any appeal against the award.

7. The learned counsel appearing for the claimant submitted that there is no evidence placed on record for fixing contributory negligence against the claimant on the ground that non possession of driving licence is not proper and the notional income fixed is also on the lower side, hence prays to enhance the compensation awarded by the Tribunal.

8. The learned counsel appearing for the second respondent – insurance company submitted that there is ample evidence placed on record to show that the claimant was not having a valid driving licence and without having driving skills, he entered into the junction of connecting roads of the



National Highway in negligent manner, which resulted in accident, hence the Tribunal has rightly fixed the contributory negligence and the Tribunal has already awarded a just compensation, hence prays to confirm the award.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. It is admitted case of the claimant that he was not having a valid driving licence even though, he denied before the Tribunal for the suggestion that he was not having a valid driving licence but the insurance company has taken a specific stand that the claimant was not able to produce his driving licence. Further in the cross examination, it was elicited that the accident was taken place in the Salem – Karur main road. Ex.R.2 – Rough sketch was also marked, which shows that the accident was taken place in the interior road connecting the Salem – Namakkal National Highway and not in the Salem to Karur main road as stated by the claimant.

11. The claimant also denied the suggestion that the lorry driver was riding the vehicle with due care and caution and the sudden entry of



him has caused the accident. On perusal of the Ex.R.2 – Rough Sketch and the fact that the accident has taken place in the interior road and not in the National Highway as admitted by the claimant shows that the claimant has suddenly entered in the interior road, which resulted in accident. The rough sketch also shows that the interior road is having small width and the claimant, who is not having valid driving licence has entered the cut road without due care and caution, and invited the accident. The Tribunal after appreciating the evidence and rightly held that the claimant has also contributed to the accident to the extent of 10%. The insurance company has not challenged the tortious liability fixed on the driver of the lorry. This Court finds no infirmity in the finding of fixing contributory negligence and inclined to confirm the same.

12. With regard to quantum of compensation, Ex.P.2 – Wound certificate and Ex.P.7 and P.8 – discharge summaries issued by the Ganga Medical Centre & Hospital shows that the claimant has sustained multiple grievous injuries and compound fractures on both legs, both hands, cheek, major crush injury bilateral lower limb with degloving of right leg with skin and soft tissue with fracture and dislocation of left ankle, abrasion on the



left shoulder, laceration on left lower eye lid, laceration on the forehead, deep abrasion on left forehead, abrasion of middle, ring and little finger with nail plate avulsion on little finger. The Ex.P.7 – discharge summary show that on 03.10.2017, the left below knee amputation was done and external fixator was fixed on the right ankle.

13. Ex.C.1- Disability Certificate issued by the Medical Board, shows that the claimant has sustained disability of 80%. The Tribunal after appreciating the medical records and the Disability Certificate has held that the claimant has sustained functional disability, which result in loss of earning power of the claimant since, he would not be able to continue his avocation as earlier. Therefore, the Tribunal after following the guidelines of this Court in ***D. Soundrarajan vs C.E.X. Onix Pvt. Ltd., [2013 (1) TNMAC 154]***, adopted multiplier method for assessing loss of earning power and considering the age of the claimant fixed multiplier as '17', awarded Rs.10,60,800/- by fixing Rs.6,500/- as monthly notional income of the deceased.

14. The nature of injury sustained by the claimant is amputation



below the knee and as per the schedule provided under the Employee's Compensation Act, the percentage of disability for amputation below knee is to be assessed as 50% but the medical board has assessed the percentage of disability as 80%. At present, the claimant is able to walk with the 'Artificial Limb', but he could not do any manual work. Considering the nature of injury and the possibility of doing any alternative employment and earn his income to some extent, this Court is inclined to modify the loss of earning power of the claimant as 60% as per the guidelines issued by the Apex Court in ***Raj Kumar vs. Ajay Kumar case [2011 ACJ 1]***.

15. However, this Court is of the view that the notional monthly income of Rs.6,500/- fixed by the Tribunal is on lower side. Considering the age, date of accident and the fact that the claimant is a manual labourer, this Court by following the guidelines laid down by the Division Bench of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** for fixing the notional income of various categories of persons whose income has not been proved and based on cost of index filed by CBDT, this Court is inclined to fix the notional monthly income of the deceased as Rs.13,500/-. Accordingly, the loss of earning power of the



C.M.A. No. 3472 of 2021

claimant is assessed as follows: (Rs.13,500 X 12 X 17 X 60%) =
Rs.16,52,400/-.

16. The Tribunal has not awarded future prospectus to the claimant, as per *Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 SSCR 299 : 2020 ACJ 2159]*, considering the age of the claimant, he is entitled to 40% future prospectus of his total income assessed under loss of earning capacity, accordingly, the compensation under future prospectus is assessed as follows: (40% X 16,52,400) = **Rs.6,60,960/-.**

17. The Tribunal has not awarded compensation towards attender charges for the period of in-patient treatment from 03.10.2017 to 27.10.2017, thus the claimant is granted Rs.10,000/- under the head 'Attender charges'. The Tribunal has not awarded compensation towards loss of amenities and disfigurement. This Court is inclined to award Rs.50,000/- each under the head Loss of amenities and for disfigurement.

18. The Tribunal has awarded Rs. 20,000/- under the head pain



and suffering, Rs.2,000/- towards transportation expenses to hospital and Rs.5,000/- towards extra nourishment, which are on the lower side, hence this Court is inclined to enhance the same to Rs.50,000/- towards pain and suffering and Rs.20,000/- each under the head transportation expenses and extra nourishment. The Tribunal based on Ex.P.15 – Medical bills has awarded Rs.5,00,000/- as compensation under the head Medical expenses, this Court is inclined to confirm the same.

19. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Transport to hospital	2,000/-	20,000/-	Enhanced
2.	Extra Nourishment	5,000/-	20,000/-	Enhanced
3.	Damage to Articles	1,000/-	1,000/-	Confirmed
4.	Medical expenses	5,00,000/-	5,00,000/-	Confirmed
5.	Pain and sufferings	20,000/-	50,000/-	Enhanced
6.	Loss of earning power	10,60,800/-	16,52,400/-	Enhanced
7.	Future prospectus	---	6,60,960/-	Granted
8.	Loss of amenities	---	50,000/-	Granted
9.	Disfigurement	---	50,000/-	Granted
10.	Attender Charges	---	10,000/-	Granted



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	Total	15,88,800/-	30,14,360/-	
	Deduction of 10% towards contributory negligence	1,58,880/-	3,01,436/-	
	Total Compensation	14,30,000/- (round off)	27,12,924/-	Enhanced

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,30,000/- is hereby enhanced to **Rs.27,12,924/- [Rupees Twenty Seven Lakh Twelve Thousand Nine Hundred and Twenty Four only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.840 of 2018 on the file of the Sessions (Fast Track Mahila) Judge, Motor Accidents Claims Tribunal, Namakkal. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with



C.M.A. No. 3472 of 2021

interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant are directed to pay the necessary Court fee, if any, on the enhanced compensation. Consequently, connected civil miscellaneous petition, if any, stands closed. There shall be no order as to costs in the present appeal.

08.02.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A. No. 3472 of 2021

To:
WEB COPY

1. The Sessions (Fast Track Mahila) Judge,
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 3472 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 3472 of 2021

08.02.2024