



C.M.A.No.2609 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2609 of 2019

Sadha

.. Appellant

Vs.

1.Asaithambi

2.Royal Sundaram Insurance Co., Ltd.,
8/H1, Mangalam Building, 4 Roads,
Omalur Main Road, Salem - 636009

3.Prakash Chand

4.HDFC ERGO General Insurance Co. Ltd.,
No.94/95, RR.Tower-II,
2nd Floor, Thiruvika Industrial Estate,
Chennai - 600 032.

(Respondent 4 amended vide Court order
dated 16.07.2024 made in

CMA.No.2609 of 2019 by AQJ)

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 29.01.2019 made in M.A.C.T.O.P.No.130 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For Respondents : No appearance for R1

Mr.G.Vasudevan for R2

Mr.N.Somasundar for R4

Notice returned for R3



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J U D G M E N T

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court.

2. The case of the claimant is that on 02.07.2012 at about 04.30 am when he was driving a lorry bearing Reg. No.TN 52 D 2480 towards vijay nagar on the extreme left side of the road, the driver of the Trailer lorry bearing Reg.No.RJ 14-G.P-8111 came in a rash and negligent manner and suddenly applied brake. Due to the said impact, the claimant dashed the trailer lorry from behind. Hence the case was registered under Sections 279 and 337 of IPC as against the driver of the Trailer lorry bearing Reg.No.RJ 14-G.P-8111. As a result of the said accident, the claimant had sustained grievous injuries and fractures and he spent a sum of Rs.9,748/- for his medical expenses. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the



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case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the trailer lorry and awarded a sum of Rs.19,798/- under various heads with interest at the rate of 7.5% per annum and directed the 4th respondent/Insurance company who is the insurer of the said trailer lorry, to pay the compensation to the claimant.

4. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. The learned counsel for the appellant submitted that the injured was aged about 29 years at the time of the accident and he was working as a driver and earning a sum of Rs.10,000/- per month. Due to the accident, he is not able to continue his avocation. Further, the claimant sustained grievous injuries and fractures and after being discharged from the hospital, he could not do his work as earlier. He further submitted that the Tribunal has awarded very less compensation in respect of extra nourishment and pain and sufferings during treatment period. Moreover, the Tribunal by mistake of fact has fixed 20% contributory negligence on



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the part of the claimant.

6. The learned counsel appearing for the 4th respondent/ insurance company submitted that the claimant was examined as P.W.1 and during his cross examination, he deposed that he has not maintained 100m distance between the vehicle. Based on which, the trial Court has rightly fixed 20% contributory negligence on the part of the claimant and the same does not warrants interference by this Court. Further, after considering the evidences and materials, the Tribunal has awarded compensation, which is perfectly in order and the same need not warrants any interference. Hence, he prayed for dismissal of the appeal.

7. Heard the learned counsel for appellant/claimant and the learned counsel appearing for the respondents.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The fact in the present case is not in dispute and the manner



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of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.

11. According to the appellant, the driver of the trailer lorry drove the lorry in a rash and negligent manner and suddenly applied brake and therefore, the claimant dashed the said trailer lorry from behind. It is the main ground of the appellant that the Tribunal has awarded very meager amount in respect of extra nourishment and pain and sufferings during the treatment period. The appellant is aged about 29 years and he was working as a driver and was earning a sum of Rs.10000/- per month. Even then, the Tribunal has not awarded any amount towards loss of income and for transportation and hence, this Court is inclined to grant a sum of Rs.10,000/- and Rs.2,000/- respectively. Further, the Tribunal has awarded a sum of Rs.10,000/- and Rs.5,000/- towards pain and sufferings and extra nourishment is very meager and the amount awarded for medical expenses during the treatment period is in order, which does not warrant interference by this Court.

12. As far as contributory negligence is concerned, the Trial Court had rightly held that that even though the driver of the trailer lorry suddenly applied brake, the claimant had not maintained appropriate



distance between the vehicle, which clearly shows that the claimant had driven the vehicle in a rash and negligent manner. Therefore, the Tribunal has rightly fixed 20% contributory negligence against the claimant. Hence, the same does not warrants any interference by this Court.

13. Accordingly, the award passed by the Tribunal stands modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Medical Expenses	9,748	9,748
Pain and Sufferings	10,000	25,000
Extra nourishment	5,000	10,000
Loss of Income during treatment period	-	10,000
Transportation	-	2,000
Total	19,798	56,748

14. The compensation awarded by the Tribunal at Rs.19,798/- is enhanced to Rs. 56,748/-. However, contributory negligence fixed by the Tribunal is perfectly in order and 20% has to be deducted towards contributory negligence from the total compensation. Hence, the fourth respondent Insurance company is directed to deposit a sum of



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Rs.45,400/- (rounded off) (Rupees forty five thousand and four hundred only), less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

15. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs.

05.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

msv

To,

The Judge,

Motor Vehicle Accident Claims

Tribunal/Subordinate Judge Court, Tiruchengode.

M.DHANDAPANI.,J

msv



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