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CMA.No.1615 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1615 of 2024

S.Sivaraman

... Appellant

VS.

1. C.Veeraragavan

2. United India Insurance Company Limited,
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.132, Greams Road,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.12.2023 in M.C.O.P.844/2017 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.Balaji
For R2 : Mrs.R.Rathna Thara

J U D G M E N T

The appellant is the claimant in M.C.O.P.844/2017 on the file of the Motor Accident Claims Tribunal, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of the M.A.C.T. Rules seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident which happened on 09.12.2016.



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2. The brief case of the appellant / claimant is as follows :

On 09.12.2016, the claimant was travelling as a pillion rider in a two-wheeler bearing Registration number TN-19-S-8902 on Tambaram-Chengalpattu G.S.T.Road. When he was nearing Thailavaram junction, the rider of the two wheeler drove the vehicle rashly and negligently and hit a bus bearing Registration number TN-21-N-1342, as a result of which, the claimant sustained injuries all over his body. He was immediately rushed to a hospital where he took treatment as an inpatient from 09.12.2016 to 01.02.2017.

3. According to the claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration number TN-19-S-8902 was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.



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5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the claimant and the rider of the two wheeler bearing Registration number TN-19-S-8902 in the ratio 50:50 and directed the second respondent, Insurance Company to pay compensation of Rs.1,33,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 01.12.2023.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.K.Balaji, learned counsel appearing for the appellant and Mrs.R.Rathna Thara, learned counsel for the second respondent.

8. Mr.K.Balaji, learned counsel appearing for the appellant/ claimant contended that the claimant was a tailor by profession and that the Medical Board attached to Government Royapettah Hospital, Chennai has assessed his disability as 30%. However, the Tribunal has not awarded



just compensation and therefore prayed for enhancement of the same.

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9. Per contra Mrs.R.Rathna Thara, learned counsel appearing for the second respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. It is contended by the claimant that he is a tailor by profession, but no satisfactory evidence was adduced by him to substantiate the same. A perusal of the Discharge Summary (Ex.P13) issued by the SRM Medical College Research and Hospital shows that the claimant had sustained the following injury :

"Right Tibia Shaft Fracture with External."

11. The Medical Board attached to Government Hospital, Royapettah had assessed the partial permanent disability as 30%. Since there is no functional disability, the Tribunal has awarded a sum of Rs.1,50,000/- towards partial permanent disability. Since the accident took place in the year 2016, a sum of Rs.7,000/- is fixed per percentage of partial permanent disability and totally a sum of Rs.2,10,000/- is awarded



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for 30% of partial permanent disability. A perusal of the discharge summary shows that the claimant was hospitalised for about six months and therefore a sum of Rs.60,000/- (10,000 X 6) is awarded towards loss of income.

12. The Tribunal has fastened 50% of contributory negligence on the part of the rider of the two wheeler in which the claimant was the pillion rider on the ground that the rider of the two wheeler drove the vehicle with two pillion riders. The Police based on the information given by the driver of the bus bearing Registration number TN-21-N-1342, registered FIR against the rider of the two wheeler. A perusal of the records shows that the bus was proceeding towards Chengalpattu from Tambaram and it was about to cross Thailavaram service road. The driver of the two wheeler should have been more careful while driving his vehicle. In any event, the claimant was only a pillion rider and there is nothing on record to show that he also contributed to the accident.

13. It is settled law that if two tort-feasors are involved in an accident, the claimant can proceed against any one of the tort-feasors and all the tort feasors need not be shown as respondents. In the instant case, the claimant had chosen to proceed against the driver of the two wheeler



and its insurer. In the circumstances, fastening 50% of contributory negligence on the part of the pillion rider of the two wheeler is totally erroneous. Therefore, the same is liable to be set aside.

14. The following tabular column would show the award passed by the Tribunal and the modification of the same by this Court:

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award of this Court</i>
1	Partial disability	Rs.1,50,000/-	Rs.2,10,000/- (30% x 7,000)
2	Medical Expenses	Rs.7,933/-	Rs.7,933/-
3	Loss of Income	Rs.20,000/-	Rs.60,000/- (10,000X6)
4	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-
5	Transportation Expenses	Rs.5,000/-	Rs.10,000/-
6	Nutrition Expenses	Rs.10,000/-	Rs.15,000/-
7	Damage to Clothes	Rs.1,000/-	Rs.1,000/-
8	Attender's Charges	Rs.22,000/-	Rs.22,000/-
9	Loss of Amenities	Rs.25,000/-	Rs.25,000/-
	Total	Rs.2,65,933/-	Rs.3,75,933/-

15. Thus, the compensation awarded by the Tribunal is enhanced to Rs.3,75,933/- which would carry interest at the rate of 7.5% per annum.

16. In the result,



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- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.3,75,933/-.
- iii. 50% contributory negligence fastened on the part of the appellant, claimant, is set aside.
- iv. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- v. The second respondent, the United India Insurance Company Limited is directed to deposit the compensation amount of Rs.3,75,933/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.844/2017 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.
- vi. On such deposit being made the appellant, claimant is permitted to withdraw the same with accrued interest and costs, after following



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due process of law.

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Index : Yes/No

Speaking order / Non speaking order

Neutral Citation : Yes / No

vum

To

1.The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.

2.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

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