



WEB COPY

C.M.A. Nos.1680 and 2918 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos.1680 and 2918 of 2022

and C.M.P. No.22574 of 2022

C.M.A. No.1680 of 2022

Arimuthu

... Petitioner/ Appellant

Vs.

1. Nandakumar

2. The Divisional Manager,
United India Insurance Company Limited,
No.46, Katpadi Salai,
Vellore.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree and to enhance the award amount in M.C.O.P. No.1506 of 2017 dated 28.03.2022, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant : M/s. A. Subadra

For R1 : Ex-parte

For R2 : M/s. R. Rathnathara

C.M.A. No.2918 of 2022

1/14



The Divisional Manager,
United India Insurance Company Limited,
No.46, Katpadi Salai,
Vellore.

... 2nd Respondent/ Appellant

Vs.

1. Arimuthu ... Petitioner/ 1st Respondent
2. Nandakumar ... 1st Respondent / 2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No.1506 of 2017 dated 28.03.2022, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant : Ms. R. Rathnathara

For R2 : Ex-parte

For R1 : Ms. A. Subadra

JUDGMENT

These Civil Miscellaneous appeals are arising out of the award passed in M.C.O.P. No.1506 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. The appeal in C.M.A. No.1680 of 2022 filed by the claimant challenging the contributory



negligence fixed on the claimant and for enhancement of compensation awarded by the Tribunal. The appeal in C.M.A. No.2018 of 2022 filed by the insurance company, challenging the entire award including the liability fixed on them, to the extent of payment of 60% of compensation ordered.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 22.07.2017, while he was riding a two wheeler bearing Registration No.TN-18-Q-8759, from west to east direction at Kilnathur to Pallikonda road and while entering into the Vellore to Cuddalore New Bypass road (Tiruvannamalai to Tirukoilur road) near Balu's Petrol Bunk, the first respondent's Maruthi Suzuki Swift car bearing Registration No.TN-10-AB-3670, driven by its driver in a rash and negligent manner from north to south direction, dashed against his two wheeler, which resulted in causing severe injuries to him. After taking treatment, the claimant had come forward 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 car, who had not



contested the claim before the Tribunal and remained ex-parte. The second respondent - insurance company contested the claim, that the first respondent's driver drove the car by observing and following traffic rules, whereas, the claimant, who came from west to east direction in a rash and negligent manner, while entering into the National Highway road, hit on the front right hand side of the car, thereby sustained injuries. Therefore, the second respondent - insurance company claims that the entire accident had happened due to negligent driving of the claimant, hence they are not liable to pay compensation.

5. Based on the pleadings and evidence placed on record by both sides, the Tribunal has held in point no.1 that, the driver of the car has driven the car negligently, similarly, the claimant has also rode the two wheeler and entered into the Highway without due care and caution, which resulted in collision of the vehicles and thereby fixed the negligence to the extent of 60:40, i.e., 60 % on the part of the car driver and 40% on the part of the claimant. In point no.2, the Tribunal has quantified and awarded total compensation for a sum of Rs.3,46,000/- and after deducting 40% towards contributory negligence awarded a sum of Rs.2,07,600/- along with interest at the rate of 7.5% per annum from the date of petition till the date of



deposit.

WEB COPY

6. Aggrieved over the above findings, the claimant as well as the insurance company have preferred these appeals.

7. The learned counsel appearing for the claimant submits that, the claimant, who examined himself as P.W.1 before the Tribunal, to prove the negligence on the part of the driver of the first respondent's car, adduced various documentary evidence, to establish negligence of car driver, which lead to this accident. The learned counsel further submits that the claimant had also lodged a complaint, but the same was not considered for registration by the police official, and the investigation has been conducted with malafide intention. The learned counsel further submitted that the compensation awarded under various heads required to be enhanced, since the compensation awarded does not satisfy the legal requirement of awarding just compensation.

8. Per contra, the learned counsel for the insurance company submitted that the police have conducted the investigation that the claimant is responsible for the accident and final report was also filed, in this regard.



WEB COPY

She has also drawn the attention of this Court by relying on the evidence of R.W.1 - Investigation Officer and the Ex.R.2 - rough sketch, to buttress her arguments that the claimant is responsible for the accident. The learned counsel further submitted that the Motor Vehicle Inspection report, marked as Exs.R.4 and R.5, clinchingly show the manner in which the accident had taken place. She further submitted that the Tribunal, at one point of time, held that the claimant alone is responsible for the accident and subsequently, deviated and held that the driver of the first respondent's car is also responsible for the accident and fixed the contributory negligence to the extent of 60%. She further submitted that the driver of the first respondent's car is not at all responsible for the accident and the entire negligence is only on the part of the claimant, therefore, prays to set aside the negligence fixed on the part of the first respondent's car driver.

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

10. In this case, on the side of the claimant, he examined himself as P.W.1 and he has narrated the manner in which the accident has taken place. According to him, he entered into the Tiruvannamalai to Tirukoilur



National Highway from the Kilnathur to Pallikonda sub road and in the cross examination, the rough sketch, which is marked as Ex.P.2 was also shown to him and he has also not denied the place of occurrence and further accepted the case, that the accident has taken place in the middle of the Highway. The Ex.P.2 - rough sketch, shows that the accident has taken place in the middle of the cross road from Kilnathur to Pallikonda sub road, which is crossing the said Highway.

11. It is also admitted case of the claimant that the car was coming from Tiruvannamalai to Thirukoilur in north to south direction. The Tiruvannamalai to Tirukolur road is a National Highway and the drivers are expected to drive their vehicles with due care and caution, while crossing the junctions. Further, the person, who is entering into the Highway should also be more careful and precautions. The Tribunal after appreciating the evidence of P.W.1, R.W.1 and also appreciating the evidence of the Motor Vehicles Inspection Report of both vehicles, which are marked as Exs.R.4 and R.5 has held that the claimant has negligently entered into the Tiruvannamalai to Tirukoilur National Highway, without properly observing the on-coming vehicles and dashed on the front right hand side of the door of the car. Further, the Tribunal has also held that, car driver also proceeded



beyond the centre median of the road, thereby, dashed against the two wheeler of the claimant, who entered into the highway. Therefore, the Tribunal has fixed the contributory negligence in the ratio 60:40 on the part of the driver of the car and the claimant.

12. On careful perusal of Ex.R.2 - rough sketch, though, it substantiates the findings of the Tribunal, I am of the view that the accident has taken place in the middle of the road and there is no clinching evidence to show either the driver of the car or the claimant alone is responsible for the accident. It is also the finding that the driver of the car had crossed the center median and the claimant has hit on the front right hand side of the door of the car by entering into the highway, which only probabalize the fact that both vehicles have entered into the cross road without taking proper precautions. Since both vehicles had equally contributed to the accident, fixing the percentage of contributory negligence of 60% on the part of the driver of the first respondent's car by the Tribunal is not proper and thereby, the contributory negligence fixed by the Tribunal is modified to the extent of 50:50.

13. As far as the quantum of compensation is concerned, the



WEB COPY

disability certificate issued by the Medical Board, Tiruvannamalai is marked as Ex.C.1, which shows that the claimant has sustained 30% disability. Therefore, the Tribunal adopted percentage method for calculating the compensation under the head disability and awarded Rs.1,50,000/- by taking Rs.5,000/- per percentage of disability. However, for the injuries sustained in the road accident taken place in the year 2017, the norms followed by this Court is awarding Rs.7,000/- per percentage of disability, therefore, considering the nature of injury and year of accident, this Court is inclined to modify the compensation awarded under the disability as Rs.2,10,000/- by taking Rs.7,000/- per percentage of disability.

14. The compensation payable for the loss of income during the temporary disablement period, the Tribunal has awarded four months loss of income by fixing Rs.9,000/- per month as notional income of the claimant, thereby awarded compensation for a sum of Rs.36,000/-. Considering the nature of injury, fixing four months as loss of income during the temporary disablement period is proper, however, the notional income fixed for the claimant is on the lower side and the same is modified to Rs.15,000/- per month. Accordingly, the compensation awarded under the head loss of income is modified to Rs.60,000/- (Rs.15,000/- per month X 4 months).



WEB COPY

15. As far as compensation awarded by the Tribunal under other heads are concerned, I am of the view that the same are just and reasonable and inclined to confirm the same.

16. 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.	Disability	1,50,000/-	2,10,000/-	Enhanced
2.	Pain and Sufferings	50,000/-	50,000/-	Confirmed
3.	Extra Nourishment	20,000/-	20,000/-	Confirmed
4.	Attender charges	20,000/-	20,000/-	Confirmed
5.	Transportation expenses	20,000/-	20,000/-	Confirmed
6.	Loss of Amenities	50,000/-	50,000/-	Confirmed
7.	Loss of income during the treatment period	36,000/-	60,000/-	Enhanced
	Total	3,46,000/-	4,30,000/-	Enhanced
	Deduction towards contributory negligence	1,38,400/- (Deduction @ 40%)	2,15,000/- (Deduction @ 50%)	---
	Total Compensation	2,07,600/-	2,15,000/-	Enhanced

18. In the result, these Civil Miscellaneous Appeals filed by the



claimant and the insurance company are partly allowed and the contributory negligence fixed by the Tribunal in the ratio of 60:40 on the part of the first respondent's driver and the claimant is hereby modified to the extent of 50:50, further, the compensation awarded to the claimant for a sum of Rs.2,07,600/- is hereby enhanced to **Rs.2,15,000/- [Rupees Two Lakh and Fifteen Thousands 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 Insurance Company, who is appellant in C.M.A.No.2918 of 2022 and second respondent in C.M.A.No.1680 of 2022 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.1506 of 2017 dated 28.03.2022, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. On such deposit, the claimant, who is appellant in C.M.A.No.1680 of 2022 and first respondent in C.M.A.No.2918 of 2022 is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant.



C.M.A. Nos.1680 and 2918 of 2

Since this Court has enhanced the compensation, the claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in these appeals.

28.11.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY

C.M.A. Nos.1680 and 2918 of 2



K. RAJASEKAR, J.

stn

C.M.A. Nos.1680 and 2918 of 2022



WEB COPY



C.M.A. Nos.1680 and 2918 of 2

28.11.2024