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C.M.A.No.2814 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2814 of 2021

L. Gopi

... Appellant

Vs.

1. B. Sathyanarayanan

2. Reliance General Insurance Company Ltd.,
Srilakshmi Complex, 1st floor,
Omalur Main road,
Bharathi Street,
Sornapuri, Salem Town and District,
Thillaipuram, Paramathy Road,
Namakkal Town and District.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2021 made in M.C.O.P.No.469 of 2018 on the file of Motor Accident Claims Tribunal/Sessions Judge Special Court for Trial of Cases under SC & ST (POA), Namakkal.

For Appellant : Mr.R.Nalliyappan

For Respondents : Ms.C.Bhuvanasundari for R2

: No appearance for R1



JUDGMENT

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The Civil Miscellaneous Appeal is filed by the claimant seeking for enhancement of compensation granted by the Tribunal in the award dated 25.01.2021 made in M.C.O.P.No.469 of 2018 on the file of Motor Accident Claims Tribunal/Sessions Judge Special Court for trial of cases under SC and ST (POA), Namakkal.

2. The parties herein are referred as per their litigative status before the claims Tribunal. The appellant is the claimant in M.C.O.P.No.469 of 2018 on the file of Motor Accident Claims Tribunal/Sessions Judge Special Court for trial of cases under SC and ST (POA), Namakkal. Chief Judicial Magistrate, Namakkal. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.03.2018.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that both the driver and the appellant are responsible for the accident, fixed negligence in the ratio 50% : 50% and awarded a sum of



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Rs.1,15,636/- as compensation to the appellant and directed the respondent-Insurance Company to pay a sum of Rs.57,818/- towards 50% of the award amount as compensation to the appellant.

4. The facts leads to filing of this appeal is that on 16.03.2018 at about 1:30 p.m. the claimant herein was riding his two wheeler Scooty Pep bearing Reg.No.TN-54-C-9271 from Thandavarayan Street situated near Sevvapet Police Quarters towards Gundupodum Street junction near Sekar Hotel. The driver of the two wheeler Honda Dio TN-54-Q-3711 came from Government Hospital, Salem towards Apsara Down road in a rash and negligent manner and dashed against the petitioner's vehicle and caused accident. A criminal case was also registered against the driver of the two wheeler Honda Dio TN-54-Q-3711 in Crime No.216/2018 under Sections 279 & 337 of IPC on the file of the Salem City Police Station.

5. The owner of the offending vehicle has not contested the claim and remained exparte.

6. The second respondent Insurance Company has filed a counter and



disputed the manner in which the accident had taken place as alleged by the claimant. Disability, income and medical bills were also disputed. The Tribunal based on the evidence placed on record has held that the claimant has also contributed 50% of the accident. Thereafter, quantified the compensation and awarded Rs.57,818/- with interest @ 7.5%.

7. The learned counsel appearing for the appellant submitted that there is no evidence placed on record to show that the claimant has also contributed in the accident. Without any evidence and purely on assumption that the claimant was not possessing any valid driving license, the Tribunal has held that the claimant has contributed to the accident which is not sustainable. He further submitted that the compensation awarded under various heads is very meagre and prayed for enhancement of the same.

8. The learned counsel appearing for the Insurance Company submitted that there is evidence placed on record to show that the accident had happened because of collusion between two vehicles and the Tribunal has also held that the claimant was not possessing valid license to ride the two wheeler. Hence, the Tribunal has rightly concluded that there is a contributory negligence on



the part of the claimant. He further contended that the compensation awarded under various heads are just compensation and there is no reason for enhancement of compensation.

9. Heard both sides and perused the materials available on record.

10. The claimant examined himself as PW1 and stated that while he was proceeding from Thandavarayan Street to Gundupodum street junction on 16.03.2018 at about 1:30 P.M. the two wheeler belonging to the 1st respondent driven by its driver suddenly entered into entered into the road from Government Hospital, Salem towards Apsara Down road in a rash and negligent manner and dashed against the claimant's vehicle. No documents or evidence were placed on record to show that the accident was on collusion. Further no evidence placed on record to show that the claimant was not possessing driving license to ride the two wheeler. Admittedly the respondent - Insurance Company have not examined any witness on their side and they have filed a counter and contended that the FIR registered against the rider of the two wheeler i.e., offending vehicle has been closed as Mistake of Fact but no such document has also been produced before the Tribunal. The Tribunal



in its award has stated that the claimant has not produced his driving license and also has not produced the final report filed by the Police in connection with the criminal case to show that the rider of the offending vehicle has been charge sheeted after completion of the investigation. On perusal of the cross examination of PW1, nowhere it is suggested about the final report filed in the criminal case, similarly there was no suggestion or any evidence placed on record to show that the accident had happened on collusion. It is the specific case of the claimant that the rider of the 1st respondent's vehicle had suddenly entered into the road from Government Hospital, Salem towards Apsara Down road in a rash and negligent manner and dashed against the claimant's vehicle and in the absence of any contra evidence, the Tribunal ought to have accepted the evidence holding that the rider of the 1st respondent's vehicle alone tortfeasor. Finding that the claimant has also contributed is based on no evidence and this Court is of the view that the same is liable to be set aside. This Court is of the view that there is no negligence on the part of the claimant. Accordingly, 50% of the contributory negligence on the part of the claimant is set aside.

11. In regard to the quantum, the claimant has been assessed with



disability of 17% and for this partial permanent disability the Tribunal has awarded Rs.3,000/- for each percentage. There is no grievance raised regarding the injuries sustained and the percentage fixed. However, this Court is of the view that from the year 2016 onwards this Court has been awarding compensation of Rs.5,000/- per percentage for the disability and accordingly compensation awarded per percentage is modified as Rs.5,000/- per percentage. Hence $17 \times \text{Rs.5,000/-} = \text{Rs.85,000/-}$. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	For partial permanent disability 17% x	51,000/-	For partial permanent disability 17%	Enhanced



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	Rs.3,000/-		x Rs.5,000/- = 85,000/-	
2.	Loss of Income for 3 months	24,000/-	24,000/-	Confirmed
3.	As per Ex.P6 Medical bills	25,636/-	25,636/-	Confirmed
4.	Pain and Sufferings	5,000/-	5,000/-	Confirmed
5.	Transportation Expenses	5,000/-	5,000/-	Confirmed
6.	Nutrition Expenses	5,000/-	5,000/-	Confirmed
	Total	Rs.1,15,636/-	Rs.1,49,636/-	
	By deducting 50% Contributory negligence Rs.1,15,636 / 2 = Rs.57,818/-		50% of the contributory negligence has been set aside	

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,15,636/- is hereby enhanced to Rs.1,49,636/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd



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respondent/Insurance Company is directed to deposit the enhanced award amount now determined 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

01.02.2024

Index : Yes / No
Internet : Yes/ No
dpq

K. RAJASEKAR, J.

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To

1.The Motor Accident Claims
Tribunal/Sessions Judge Special Court

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for Trial of Cases under SC & ST (POA),
Namakkal.

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

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