



C.M.A.No.2989 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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Chennappan

... Appellant

Vs.

1.Mallesh

2.The Branch Manager,
Bajaj Allianz General Insurance Company Limited,
Branch Office, Golden Heights,
4th Floor, No.1/2, 59th#C#Cross,
4th M Block, Rajaji Nagar,
Bangalore-560 010.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2022 made in M.C.O.P.No.237 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.



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For Appellant : Mr.S.P.Yuaraj
For Respondents : R1-Dispensed with
Mr.G.Vasudevan for R2

J U D G M E N T

The appellant / claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Additional District Court, Hosur, in M.C.O.P.No.237 of 2018, dated 10.01.2022, has filed this appeal.

2. On 30.08.2017, at about 19.00 hours, when the claimant was riding TVS Piyaro towards Balahoddanapalli, near Kempannasetty Quarry situated in Kadichipalli to Balehoddanapalli road, the driver of the tempo belonging to the first respondent and insured with the second respondent drove the same in a rash and negligent manner and dashed against the claimant's vehicle, due to which, the claimant sustained grievous injuries. Under these circumstances, the claim petition came to be filed by the claimant before the Tribunal seeking for compensation against the respondents who are the owner and insurer of the Tempo.



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3. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P1 to P9 were marked. On the side of the respondents, no witness was examined and no documents were marked. The Tribunal, on considering the facts and circumstances of the 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 Tempo. The Tribunal also took into consideration the fact that the claimant has not produced the driving licence and therefore, 15% of contributory negligence has been fixed against the claimant. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.20,62,584/- under various heads. The above compensation was directed to be paid by the second respondent along with interest at 7.5% p.a.

4. The claimant, not being satisfied with the quantum of compensation awarded by the Tribunal and aggrieved by the finding that 15% contributory negligence was attributable on him, has filed this appeal seeking compensation.



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5. The learned counsel appearing for the appellant submitted that the present appeal has been filed mainly on two grounds with regard to contributory negligence of 15% fixed against the appellant and for enhancement of compensation towards pain and sufferings. The Tribunal has erroneously attributed 15% contributory negligence on the appellant for not having produced the Driving license, however, mere failure to produce driving license is not sufficient cause to draw adverse inference in respect of contributory negligence. Hence, the learned counsel prays for allowing the appeal.

6. The first respondent remained *ex-parte* before the Tribunal.

7. Per contra, learned counsel appearing for the second respondent / Insurance company submits that the accident took place only negligence on the part of the claimant and the claimant has not produced the driving license and therefore, the Tribunal has rightly fixed 15% contributory



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negligence on the claimant and the compensation awarded by the Tribunal is also on the higher side which does not require any interference by this Court. Hence, he prays for dismissal of this appeal.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded and the contributory negligence.

10. The main grievance expressed by the learned counsel for appellant pertains to the pain and sufferings fixed by the Tribunal and 15% contributory negligence fixed against the appellant. It is seen from records that the appellant has sustained multiple injuries and has undergone



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treatment as in-patient for nearly 38 days and therefore, this Court is inclined to enhance the compensation under the head 'Pain and Suffering' from Rs.10,000/- to Rs.75,000/-. The compensation awarded under the other heads is reasonable and it does not require the interference of this Court.

11. The next issue is with regard to the contributory negligence that was fastened against the appellant. Admittedly, the appellant has not produced the valid driving license and therefore, the Tribunal has rightly fixed 15% contributory negligence on the appellant and the same does not require any interference of this Court.

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Disability	20,16,000/-	20,16,000/-
2	Medical Expenses	3,65,569/-	3,65,569/-



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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
3	Future Medical Expenses	10,000/-	10,000/-
4	Pain and sufferings	10,000/-	75,000/-
5	Loss of Amenities	10,000/-	10,000/-
6	Extra Nourishment	5,000/-	5,000/-
7	Attender Charges	5,000/-	5,000/-
8.	Transportation Expenses	5,000/-	5,000/-
	Total	Rs.24,26,569/-	Rs.24,91,569/-
	Contributory negligence 15%	3,63,985/-	3,73,735/-
	Compensation payable	Rs.20,62,584/-	Rs.21,17,834/-

13. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.20,62,584/- is hereby enhanced to Rs.21,17,834/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent is directed to deposit the entire award amount now



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determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.237 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. On such deposit, the appellant 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 proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



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To

1. The Motor Accidents Claims Tribunal,
Additional District Court, Hosur.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

ssb

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