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CMA.No.1816 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1816 of 2024

V. Mohan

.... Appellant

vs.

1. A.K. Balaji

2. M/s. United India Insurance Company Limited,
Sillingi Building, 4th Floor,
No.134, Grems Road,
Chennai 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.02.2024 in M.C.O.P.1795/2019 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	: Mr. K. Balaji
R1	: No appearance
For R2	: Mrs. R. Rathna Thara



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J U D G M E N T

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The appellant is the claimant in M.C.O.P.1795/2019 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules, seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that occurred on 05.12.2017.

2. The case of the claimant is that on 05.12.2017, he was riding his motorcycle bearing Registration number TN-22-AA-5304 on Tambaram-Puzhal bypass Road. When he was nearing Porur Retteri, a TATA Ace Van bearing Registration No.TN-20-BU-8989, belonging to the first respondent, was parked on the road without any indicator as a result of which he hit the van and sustained injuries.

2.1. According to the claimant, the rash and negligent parking of TATA Ace Van bearing Registration No.TN-20-BU-8989 was the cause of the accident and that since the said van was insured with the second respondent, the United India Insurance Company Limited,



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Chennai, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the owner of the van remained absent and was set *ex parte*. The second respondent insurance company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the TATA Ace Van bearing Registration No.TN-20-BU-8989 and the claimant in the ratio 70:30 and directed the second respondent Insurance Company to pay compensation of Rs.2,54,828/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal further held that the liability of the owner of the van and the insurance company is joint and several.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of



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the Motor Vehicles Act, 1988.

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6. Heard Mr. K. Balaji, learned counsel appearing for the appellant and Mrs.R.Rathna Thara, learned counsel appearing for the second respondent/Insurance Company. No representation for the first respondent, the owner of the van.

7. Mr. K. Balaji, learned counsel for the appellant contended that though the FIR and the final report clearly show that the rash and negligent parking of TATA Ace Van bearing Registration No.TN-20-BU-8989 was the cause of accident, the Tribunal had fixed contributory negligence on the part of the claimant to the extent of 30%. He also contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. He, therefore, prayed for enhancement of compensation.

8. Per contra, Mrs.R.Rathna Thara, learned counsel appearing for the second respondent/Insurance Company contended that the accident took place on the four lane track and the claimant was also responsible



for the accident. Therefore, the Tribunal was right in fastening 30% contributory negligence on the part of the claimant. It is also her contention that the Tribunal, after analysing the evidence on record, had awarded just compensation and therefore, the same need not be disturbed in the present appeal.

Negligence

9. A perusal of the FIR (ExP1) and the final report (Ex.P4) show that the driver of the TATA Ace Van bearing Registration No.TN-20-BU-8989 had parked his vehicle in the middle of the road. The accident took place in the National Highways at about 22.30 hours. In the circumstances, fastening contributory negligence on the part of the claimant to the extent of 30% by the Tribunal cannot be sustained.

Quantum

10. The claimant had sustained bilateral lefort III fracture, Nasal bone fracture and dental fracture. The Medical Board attached to Rajiv Gandhi Hospital, Chennai, assessed the partial permanent disability of the claimant as 38%. Since there is no functional disability, the Tribunal fixed a sum of Rs.5,000/- per percentage of disability and awarded a sum



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of Rs.1,90,000/- towards partial permanent disability. Considering the age of the claimant and the year of accident, a sum of Rs.7,000/- per percentage of disability is awarded. Hence, a sum of Rs.2,66,000/- (38x7000) is awarded towards partial permanent disability. The Award passed by the Tribunal under the other heads are more than sufficient and therefore, the same is confirmed.

10.1. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Partial permanent disability	1,90,000/- (38x5000)	2,66,000/- 38x7000)
2.	Medical Expenses	1,040/-	1,040/-
3.	Loss of Income	25,000/-	25,000/-
4.	Pain and sufferings	35,000/-	35,000/-
5.	Mental agony	35,000/-	35,000/-
6.	Transportation Expenses	10,000/-	10,000/-
7.	Nutrition expenses	30,000/-	30,000/-



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
8.	Damages to clothes	1,000/-	1,000/-
9.	Attender charges	2,000/-	2,000/-
10.	Loss of amenities	35,000/-	35,000/-
	Total	3,64,040/-	4,40,040/-
	Less 30% towards contributory negligence fixed on the claimant by the Tribunal	1,09,212/-	-
		2,54,828/-	

10.2. Thus, the compensation awarded by the Tribunal is enhanced to Rs.4,40,040/- that would carry interest at the rate of 7.5% per annum.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. 30% contributory negligence fastened on the part of the claimant by the Tribunal is set aside.



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iii. The compensation awarded by the Tribunal is enhanced to

Rs.4,40,040/-

iv. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.

v. The second Respondent, the United India Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.4,40,040/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.1795/2019 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

vi. On such deposit being made, the appellant/claimant is at liberty to



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withdraw the same, after following due process of law.

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Index : Yes/No
Speaking/Non-speaking order
bga
To

1. Motor Accident Claims Tribunal, Court of Small Causes, Chennai.
2. M/s. United India Insurance Company Limited,
Sillingi Building, 4th Floor,
No.134, Greams Road,
Chennai 600 006.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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