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CMA.No.1903 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1903 of 2023

Radhakrishnan

... Appellant

vs.

1. B.Amudha

2. United India Insurance Company Limited,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 16.03.2023 in M.C.O.P.6952 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra

R1 : No appearance

For R2 : Ms.R.Rathnathara



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J U D G M E N T

The appellant is the claimant in M.C.O.P.6952 of 2017 on the file of the Motor Accident Claims Tribunal, Small Causes Court Chennai. He filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.70,00,000/- for the injuries sustained by him in a road accident that took place on 22.09.2017.

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

On 22.09.2017, the claimant was riding a two wheeler bearing Registration Number TN-04-R-6384 on OMR road, Chennai. When he was nearing Apollo Hospital signal near Perungudi, a speeding lorry bearing Registration Number TN-28-AB-5145 hit the two wheeler from behind, as a result of which, the claimant sustained injuries all over his body. He was immediately rushed to the hospital.

2.1. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-28-AB-5145, 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 of the vehicle and the insurer are jointly and severally liable to pay



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compensation to him.

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3. In the Tribunal, the owner of the lorry, remained absent and was set *ex parte*. The second respondent, the United India Insurance Company Limited resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, vide its orders dated 16.03.2023, fastened negligence on the part of the driver of the lorry bearing Registration Number TN-28-AB-5145 and the claimant in the ratio 80:20 and directed the second respondent to pay compensation of Rs.9,04,400/- (80% of the total compensation of Rs.11,30,500/-) 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 also held that the liability of the owner and the insurer is joint and several.

5. Aggrieved over the quantum of compensation awarded by the



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Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Ms.A.Subadra, learned counsel for the appellant and Ms.R.Rathnathara, learned counsel for the second respondent.

7. Ms.A.Subadra, learned counsel for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. She therefore, prayed for enhancement of compensation.

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

9. The FIR (Ex.P1) and the final report are against the driver of the lorry. The manner of the accident also shows that the driver of the



lorry was responsible for the accident. In the circumstances, the Tribunal was wrong in fastening contributory negligence on the part of the claimant on the ground that he did not have a valid driving licence on the date of accident. Moreover, there is nothing on record to show that the claimant also contributed to the accident.

10. The claimant was admitted as an inpatient for more than thirty days. The Medical Board attached to Government Stanley Medical College Hospital, Chennai, has assessed his disability as 67%. According to the claimant, he is a consultant for factories earning a sum of Rs.25,000/- per month. However, he did not adduce any documentary evidence to show his actual income. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.7,000/-. The accident took place in the year 2017 and therefore, the notional monthly income fixed by the Tribunal cannot be said to be on the lower side. Since there is no functional disability, awarding a sum of Rs.7,000/- per percentage of disability to the claimant would meet the ends of justice. Therefore, a sum of Rs.4,69,000/- ($7,000 \times 67 = 4,69,000$) is awarded towards partial permanent disability.



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11. The following tabular column would show the amount awarded by the Tribunal and the 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.	Disability	84,000/-	4,69,000/- (67x7000)
2.	Pain and sufferings	30,000/-	50,000/-
3.	Transportation charges	4,000/-	5,000/-
4.	Medical expenses	9,63,011/-	9,63,011/-
5.	Extra nourishment	10,000/-	15,000/-
6.	Attender charges	10,500/-	12,000/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Loss of earnings	28,000/-	28,000/-
	Total	Rs.11,30,511/- Rounded off to Rs.11,30,500/- After deduction 80% contributory negligence Rs.9,04,400/-	Rs.15,43,011/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.15,43,011/- which would carry interest at the rate of 7.5% per annum.



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13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The orders passed by Tribunal fixing contributory negligence on the part of the claimant is set aside.
- iii. The compensation awarded by the Tribunal is enhanced to Rs.15,43,011/-.
- iv. The appellant / claimant is directed to pay the 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, is directed to deposit the enhanced compensation amount, i.e., Rs.15,43,011/- (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.6952 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, 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
mtl

To

1.The Motor Accident Claims Tribunal,

8/10

<https://www.mhc.tn.gov.in/judis>



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III Small Causes Court, Chennai.

2. United India Insurance Company Limited,
No.134, Greaves Road,
IV Floor, Anna Salai,
Chennai - 600 006.

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



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R.HEMALATHA, J.
mtl

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