



WEB COPY



C.M.A. No.3311 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.3311 of 2021

M. Natarajan

.... Appellant

vs.

1. K. Sagadevan

2. The New India Assurance Company Ltd.,
12th Floor, Naurang House,
No.21, Kasturba Gandhi Marg,
New Delhi – 110 001.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Acts, 1988 against the judgment and decree dated 17.12.2019 made in M.C.O.P. No.348 of 2016 on the file of MACT / Chief Judicial Magistrate Court at Namakkal.

For Appellant	:	Mr.Ma.P. Thangavel
For Respondents	:	Mr.P.S. Kothandaraman for R2 R1 - Ex-parte

JUDGMENT

This appeal has been filed by the claimant seeking for enhancement of compensation and he has also questioned the assessment



C.M.A. No.3311 of 2021

of contributory negligence fixed by the Tribunal against him under the impugned award.

2. Heard Mr.Ma.P. Thangavel, learned counsel for the appellant / claimant and Mr.P.S. Kothandaraman, learned counsel for the 2nd respondent / Insurance Company. The first respondent remained ex-parte both before the Tribunal and before this Court.

3. This Court has perused and examined the impugned award passed by the Tribunal.

4. Admittedly, the appellant / claimant was driving his vehicle on the wrong side of the road. He himself has admitted in his deposition during his cross examination that he was driving his vehicle on the wrong side of the road. The learned counsel for the appellant / claimant would submit that only based on the rough sketch which was marked as Ex.R1, the appellant / claimant had made a statement that he was driving his vehicle on the wrong side of the road. However, as seen from the evidence available on record, it is not so. A categorical admission has been made by the appellant / claimant, in his deposition that he was driving his vehicle on the wrong side of the road. While giving that statement there is no reference to the rough sketch (Ex.R1) as claimed by the appellant / claimant. In support of his contention, the learned counsel



for the appellant also drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***Jiju Kuruvila & Others vs.***

Kunjujamma Mohan & others reported in 2013 (4) TN MAC 44 (SC)

and would submit that the mere position of the vehicle after an accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. This Court is of the considered view that the said decision is not applicable to the facts of this case. Since in the instant case, there is a categorical admission made by the appellant / claimant without reference to the rough sketch (Ex.R1) that he was driving his vehicle on the wrong side of the road. The Tribunal has rightly taken note of the said fact and has rightly fixed the contributory negligence of the appellant / claimant at 75% and 25% on the driver of the other vehicle. There is no infirmity in the finding of the Tribunal with regard to the fixation of the contributory negligence and the same is confirmed by this Court.

5. Insofar as the quantum of compensation awarded by the Tribunal to the appellant / claimant is concerned, the appellant's claim seeking for enhancement is justified.

6. The Tribunal under the impugned award has directed the 2nd respondent / Insurance Company to pay a compensation of Rs.65,300/-



C.M.A. No.3311 of 2021

after adjusting 75% towards contributory negligence on the part of the appellant / claimant due to driving his vehicle on the wrong side of the road. The total compensation determined by the Tribunal for the injuries sustained by the appellant / claimant are as follows :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Permanent disability	54,000
Medical Bills (Ex.P5 series)	1,15,200
Pain and suffering	50,000
Extra nourishment	7,500
Transport expenses	7,500
Loss of earnings (Rs.9,000 x 3 months)	27,000
	2,61,200
Less Contributory negligence @ 75%	1,95,900
Total	65,300

7. The appellant / claimant has suffered 18% disability for the injuries sustained by him as a result of an accident involving a vehicle insured with the 2nd respondent / Insurance Company. The accident happened in the year 2015. The Tribunal has awarded a disability compensation of Rs.54,000/- to the appellant / claimant, calculated at Rs.3,000/- per percentage of disability for the 18% disability suffered by



the appellant / claimant. This Court after giving due consideration to the year of the accident is of the considered view that the Tribunal ought to have awarded Rs.4,000/- per percentage of disability which is the settled practice followed by this Court in respect of any accident which happened in the year 2015, instead of erroneously awarding Rs.3,000/- per percentage of disability. Accordingly, the disability compensation payable to the appellant / claimant is re-determined by this Court by enhancing the same to Rs.72,000/- i.e., Rs.4,000/- per percentage of disability x 18%, instead of Rs.54,000/-, erroneously determined by the Tribunal.

8. The Tribunal has awarded a compensation of Rs.1,15,200/- towards medical bills based on the medical bills produced by the appellant / claimant before the Tribunal, which were marked as Ex.P5 series. The same is confirmed by this Court.

9. With regard to the compensation awarded by the Tribunal under other heads viz., Pain and suffering, Transport expenses and Loss of earnings are concerned, the said compensation cannot be considered to be unjust, as alleged by the appellant / claimant and therefore, the same is confirmed by this Court.



WEB COPY

10. However, the Tribunal has failed to award any compensation to the appellant/claimant towards loss of amenities and attender charges despite the fact that the appellant / claimant was hospitalised for a period of ten days. This Court therefore, awards a compensation of Rs.10,000/- each to the appellant / claimant towards loss of amenities and attender charges respectively.

11. The compensation awarded by the Tribunal towards extra nourishment at Rs.7,500/- is also low and it has to be enhanced to Rs.10,000/-. Accordingly, the compensation towards extra nourishment is enhanced from Rs.7,500/- to Rs.10,000/-.

12. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

<i>Heads</i>	<i>Amount awarded by the tribunal</i>	<i>Amount awarded by this Court</i>
Permanent disability * Rs.3,000/- * 18% # Rs.4,000/- x 18%	54,000 *	72,000 #
Medical Bills (Ex.P5 series)	1,15,200	1,15,200
Pain and suffering	50,000	50,000



<i>Heads</i>	<i>Amount awarded by the tribunal</i>	<i>Amount awarded by this Court</i>
Extra nourishment	7,500	10,000
Transport expenses	7,500	7,500
Loss of earnings (Rs.9,000 x 3 months)	27,000	27,000
Loss of amenities	-	10,000
Attender charges	-	10,000
	2,61,200	3,01,700
Less Contributory negligence @ 75%	1,95,900	2,26,275
Total	65,300	75,425

13. In the result, this Civil Miscellaneous Appeal stands allowed by enhancing the compensation awarded by the Tribunal under the impugned award from Rs.65,300/- to Rs.75,425/-, i.e., after adjusting contributory negligence @ 75% from the award amount. No costs. Consequently, connected miscellaneous petition is closed.

14. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.348 of 2016 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court at Namakkal, within a period



C.M.A. No.3311 of 2021

of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant / claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

03.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Chief Judicial Magistrate,
Namakkal.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

ABDUL QUDDHOSE, J.

vsi2



WEB COPY



C.M.A. No.3311 of 2021

C.M.A. No.3311 of 2021

03.07.2024