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C.M.A.No.2972 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2972 of 2021

M. Nalliappan

... Appellant

..Vs..

1. A. Chandrasekaran

2. United India Insurance Company Limited (Rasipuram)

TPHUB, Having office at 104-A,

Peramanur Main Road, Salem 7.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 14.12.2020, on the file of the Motor Accident Claims Tribunal, Special Sub-court No.II, Salem, in M.C.O.P.1968 of 2019.

For Appellant : Mr.S.P. Yuvaraj

R1 : No appearance

For R2 : Ms. I. Malar



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C.M.A.No.2972 of 2021

JUDGMENT

The appellant is the claimant in M.C.O.P.1968/2019 on the file of the Motor Accident Claims Tribunal, Special Sub-court No.II, Salem, and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the M.A.C.T. Rules, seeking compensation of Rs.30,00,000/- for the injuries sustained by him in a road accident that occurred on 08.07.2019.

2. The case of the appellant/claimant is that on 08.07.2019, he was riding his TVS Moped bearing Registration Number TN 90 C 2811 on Attaimpatti-Vennandur Road and near Aathupillaiair temple bridge, a speeding Bolero Pickup Van bearing Registration Number TN 28 BY 9401, hit his two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to a nearby hospital.

2.1. According to the claimant, the rash and negligent driving of the driver of the Bolero Pickup Van bearing Registration Number TN 28 BY



9401, belonging to the first respondent, was the cause of the accident and that since the said van was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the first respondent remained absent and was set *ex parte*. The second respondent 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 Bolero Pickup Van bearing Registration Number TN 28 BY 9401 and on the claimant in the ratio 80:20 and awarded a total compensation of Rs.16,13,460/- out of which the second respondent Insurance Company was directed to pay Rs.12,90,768/- (80% of the total compensation amount) to the claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 14.12.2020. The Tribunal further held that the liability of the owner of the van and the



C.M.A.No.2972 of 2021

Insurance Company is joint and several.

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5. Aggrieved over the quantum of compensation awarded by the Tribunal and also challenging fastening contributory negligence on the part of the claimant, the appellant/claimant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

6. Heard Mr.S.P. Yuvaraj, learned counsel for the appellant and Ms.I. Malar, learned counsel for the second respondent Insurance Company.

7. Mr. S.P. Yuvaraj, learned counsel for the appellant contended that when the Tribunal had come to a conclusion that the driver of Bolero Pickup Van bearing Registration Number TN 28 BY 9401 was rash and negligent in driving his vehicle, had erroneously fastened contributory negligence on the part of the claimant on the sole ground that he was not in possession of a valid driving licence on the date of accident. He also contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant and prayed for



enhancement of the same.

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8. Per contra, Ms. I. Malar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal after analysing the evidence on record fixed contributory negligence on the part of the claimant and awarded just compensation and therefore the same need not be disturbed in the present appeal.

Negligence

9. A perusal of the FIR (Ex.P1) shows that the driver of the Bolero Pickup Van bearing Registration Number TN 28 BY 9401 was rash and negligent in driving his vehicle. The rough sketch (Ex.P5) shows that the claimant was proceeding from Attaimpatti to Vennandur and he was on the left hand side of the road. The accident took place in the northern side of the road which means the driver of the Bolero Pickup van had cut the lane and hit the two wheeler. When it is seen that the driver of the Bolero Pick up van was rash and negligent in driving his vehicle, fastening contributory negligence on the part of the claimant by the Tribunal on the sole ground that he was not in possession of a valid driving licence on the date of accident cannot be sustained. Moreover,



C.M.A.No.2972 of 2021

there is no evidence on record that the rider of the two wheeler (claimant) contributed to the accident.

Quantum

9.1. A perusal of the medical records shows that the right leg of the claimant was amputated below knee level. The Medical Board attached to Government Mohan Kumaramangalam Medical College Hospital, Salem, assessed the disability of the claimant as 65%. According to the claimant he was working in a Powerloom company. Therefore, multiplier method has to be applied as per the decision in ***Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343.***

9.2. In the absence of satisfactory income proof, the Tribunal fixed the monthly income of the claimant as Rs.9,000/-. Considering the year of accident and the age of the claimant, a sum of Rs.14,000/- is fixed as the monthly income of the claimant. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***, 10% is added towards future prospects of the claimant. The proper multiplier in the instant case is 11 as per the decision rendered in ***Sarla Verma and others vs. Delhi***



Transport Corporation and another reported in ***(2009) 6 SCC 121.***

Accordingly the 'loss of earning capacity' is calculated as follows.

Calculation for loss of earning capacity

Notional income fixed	- Rs.14,000/-
10% Future prospects	- Rs.15,400/-
Proper multiplier	- 11
Disability suffered by appellant	- 65%
Loss of earning capacity	- 15,400 x 12 x 11 x 65/100
	= Rs.13,21,320/-.

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>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of earning capacity	8,49,420/-	13,21,320/-
2.	Pain and sufferings	2,00,000/-	2,00,000/-
3.	Loss of amenities	2,00,000/-	2,00,000/-
4.	Medical expenses	3,040/-	3,040/-
5.	Cost of artificial limb fixation	2,50,000/-	2,50,000/-
6.	Transportation expenses	10,000/-	10,000/-



WEB COPY



C.M.A.No.2972 of 2021

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
7.	Extra nourishment	50,000/-	50,000/-
8.	Attender charges	50,000/-	50,000/-
9.	Damages to clothes	1,000/-	1,000/-
10.	Total	16,13,460/- After deduction 20% contributory negligence 12,90,768/-	20,85,360/-

9.3. Thus, the compensation awarded by the Tribunal is enhanced to **Rs.20,85,360/-**. This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- i. The orders passed by the Tribunal fixing contributory negligence on the part of the claimant to an extent of 20% is set aside.
- ii. The compensation awarded by the Tribunal is enhanced to **Rs.20,85,360/-**.



C.M.A.No.2972 of 2021

WEB COPY

- iii. 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 the receipt of Court fee.
- iv. The second respondent, the United India Insurance Company Limited, Salem, is directed to deposit the enhanced compensation amount of **Rs.20,85,360/-** (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.1968 of 2019 on the file of the on the file of the Motor Accident Claims Tribunal, Special Sub-court No.II, Salem ,within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.
- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

27.09.2024

Index : Yes/No
Internet : Yes/No
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C.M.A.No.2972 of 2021

To

1. The Special Sub Judge II
Motor Accident Claims Tribunal, Salem.
2. United India Insurance Company Limited (Rasipuram)
TPHUB, Having office at 104-A,
Peramanur Main Road, Salem 7.
3. The Section Officer, VR Section, High Court, Madras.



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C.M.A.No.2972 of 2021

R. HEMALATHA, J.

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C.M.A.No.2972 of 2021

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