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Civil Miscellaneous Appeal No.1337 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1337 of 2024

Jayaveeran

... Appellant

Vs.

1.G.R.Subramanian (Exparte)

2. National Insurance co Ltd.,
No.66, Greams Road,
Chennai – 600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree in M.C.O.P.No.7719 of 2018 dated 30.11.2021 on the file of the Motor Accident Claims Tribunal in the IV Court of Small Causes, Chennai.

For Appellant : Mr.R.Mohan Babu

For Respondents : Mr.C.Paranthaman for R2
R1 – Set Exparte



JUDGMENT

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The claimant not being satisfied with the quantum of compensation awarded by the Tribunal and also attributing 20% contributory negligence against the claimant, has filed the present appeal against the award passed by Motor Accident Claims Tribunal in the IV Court of Small Causes, Chennai, in M.C.O.P.No.7719 of 2018 dated 30.11.2021.

2. The case of the claimant is that he was riding a two wheeler on 22.08.2018 at Jayankondam to Vridhachalam main road near Andimadam Indane Gas godown. The offending vehicle was driven in a rash and negligent manner and it came in the opposite direction and hit the two wheeler and as a result of which, the claimant sustained the following injury :-

Compound Communal Base of 1st Metacarpal, Ppx thumb, PPX IV finger, V Metacarpal head.

The claimant underwent treatment as an in patient for nearly 11 days from 23.08.2018 to 02.09.2018 and an operation was also performed.



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The medical board assessed 35% disability, considering the nature of injury sustained by the claimant. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. 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 lorry driver. Having rendered such a finding, the Tribunal found that the claimant did not possess a valid driving license and therefore, 20% contributory negligence was attributed against the claimant.

4. The Tribunal thereafter proceeded to fix the total compensation at Rs.7,22,736/- under various heads as follows :-

<i>Sl.N o.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	Rs.5,88,000/-
2.	Medical expenses	Rs.57, 236/-



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3.	Loss of Income	Rs.16,000/-
4.	Pain and suffering	Rs.15,000/-
5.	Transportation expenses	Rs.5,000/-
6.	Nutrition expenses	Rs.10,000/-
7.	Damages to clothes	Rs.1,000/-
8.	Attendar Charges	Rs.5,500/-
9.	Loss of Amenities	Rs.15,000/-
10.	Mental Agony	Rs.10,000/-
	Total	Rs.7,22,736/-

Out of the above amount, 20% was attributed towards contributory negligence and the insurance company was directed to pay a sum of Rs.5,78,189/- (rounded off to Rs.5,78,500/-) with interest at the rate of 7.5% per annum.

5. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

6. Heard Mr.R.Mohan Babu, learned counsel for appellant/claimant and Mr.C.Paranthaman, learned counsel for 2nd



respondent.

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6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The Tribunal on considering the evidence available on record came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the lorry driver. After having rendered such a finding, the Tribunal found that the claimant did not possess a valid driving license and on that ground, the Tribunal attributed 20% contributory negligence against the claimant. It is now well settled that a person driving without a license by itself cannot give rise to an assumption that there was negligence and that he had contributed to the negligence. Useful reference can be made to the judgement of the Apex Court in ***[Dinesh Kumar J Vs. National Insurance Company Limited and others]*** reported in ***2018 1 SCC 750***.



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11. There is absolutely no material to show that the claimant not possessing a valid driving license, had also contributed to the accident. Therefore, the Tribunal was not right in attributing 20% contributory negligence against the claimant. Hence, the finding of the Tribunal is hereby interfered and set aside.

12. Insofar as the quantum of compensation is concerned, this Court finds that the Tribunal has fixed a reasonable compensation under the various heads and the same does not require the interference of this Court.

13. The learned counsel for the Appellant submitted that considering the nature of injury sustained by the appellant, he requires continuous treatment even in future and therefore, the Tribunal ought to have granted some compensation under the head of future medical expenses. In the instant case, the appellant has neither quantified the compensation under this head or has produced any materials to show the nature of treatment undergone. Therefore, the compensation cannot be



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granted under this head on the basis of mere assumption.

14. In the light of the above discussion, this Appeal is partly allowed and there shall be a direction to the 2nd respondent to deposit the entire compensation of Rs.7,22,736/- (rounded off to Rs.7,22,800/-) with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 414 days as was ordered by this Court in C.M.P.No.17338 of 2023, dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

19.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To,
Motor Accident Claims Tribunal in the IV Court of Small Causes,
Chennai.

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19.06.2024