



WEB COPY



C.M.A.No.3143 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3143 of 2021

S.Sivakumar

... Appellant

Vs.

1.C.Thangavel

2.The Branch Manager,

The Iffco-Tokio General Insurance Co. Ltd.,

No.138/2, II Floor, LMR Shopping Arcade,

Opp: MGM Theatre, Namakkal Taluk & District.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.160 of 2019 dated 05.04.2021 on the file of the Motor Accident Claim Tribunal / Principal District Judge, Namakkal, by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : No appearance [R1]

Mr.J.Michael Visuvasam [R2]



C.M.A.No.3143 of 2021

WEB COPY

JUDGMENT

The appellant/claimant is before this Court seeking an enhancement of the compensation amount passed by the Motor Accident Claim Tribunal/Principal District Judge, Namakkal in M.C.O.P.No.160 of 2019 dated 05.04.2021.

2. The case of the appellant is that, on 03.05.2017 at about 4.00 p.m., he was riding his two-wheeler bearing Regn.No.TN-28-AL-9156 accompanying his wife Umavathi as a pillion rider at Paramathi to Namakkal Main Road, near Padamudipalayam Taluk Office and while he was trying to cross the branch road in the left side of the road, at that time, one Manikandan, rider of motorcycle bearing Regn.No.TN-88-Z-9698, belonging to the 1st respondent, which was insured with the 2nd respondent, driven the same in a rash and negligent manner endangering in the opposite side without making horn and dashed against the two-wheeler of the appellant/claimant. Due to which, both the claimant and his wife fell down and the claimant's wife sustained multiple fractures in her back head, face,



C.M.A.No.3143 of 2021

right shoulder and the claimant has also sustained multiple grievous injuries and both were taken to the Government Hospital, Namakkal, where the Umavathi reported as dead and the claimant was given first aid at Akshya Hospital, Namakkal and then he was admitted as Salem Nero Foundation Hospital, Salem. Thereafter, the appellant/claimant had filed a claim petition claiming compensation for a sum of Rs.20,00,000/- before the Tribunal in M.C.O.P.No.160 of 2019 for the injuries sustained by him in the said road accident.

3. Before the Tribunal, the claimant examined three witness viz., P.W.1 to P.W.3 and marked 24 documents viz., Ex.P.1 to Ex.P.24. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.7,47,378/- as compensation to the claimant after deducting 15% towards contributory negligence. Aggrieved by the same, the appellant has preferred the present appeal.

4. Learned counsel appearing for the appellant submitted that the



C.M.A.No.3143 of 2021

Tribunal erred in fixing 15% contributory negligence on the appellant/claimant on the ground of non-wearing of helmet, instead of fixing the entire liability on the 2nd respondent/Insurance Company. Further, he submitted that the Tribunal erred in fixing Rs.3,000/- per percentage of disability, since at the relevant point of time, per percentage of disability is Rs.7,000/-, which requires to be enhanced. He further submitted that the compensation awarded under the other heads are on the lower side, which also requires to be enhanced. Accordingly, he prays for setting aside the contributory negligence fixed on the appellant and appropriate enhancement in favour of the appellant.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, at the time of accident, the appellant was not wearing the helmet and therefore, the Tribunal has rightly fixed 15% contributory negligence on the appellant, which does not require any interference. He further submitted that, by considering all the oral and documentary evidence, the Tribunal has awarded just and reasonable compensation under various heads, which does not require any



C.M.A.No.3143 of 2021

enhancement. Accordingly, he prays for dismissal of the appeal.

WEB COPY

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The first issue, which arises for consideration in this appeal is with regard to 15% contributory negligence fixed by the Tribunal on the appellant. The Tribunal, on appreciation of evidence, has rendered a categorical finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered this finding, the Tribunal attributed 15% contributory negligence against the appellant only on the ground that he was not wearing a helmet at the time of accident. The non-wearing of helmet has not actually contributed to the negligence resulting in the accident. Therefore, this Court is inclined to interfere with the said finding and sets aside the contributory negligence of 15% fixed by the Tribunal on the appellant.

8. Now, coming to the question of quantum of compensation awarded



C.M.A.No.3143 of 2021

by the Tribunal, it is borne from the award passed by the Tribunal that,

Ex.P24 is the Disability Certificate of the appellant, in which, it is stated that the appellant had suffered 35% partial permanent disability. By considering the said certificate, the Tribunal, had erroneously adopted a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,05,000/- towards partial permanent disability. However, as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.7,000/- per percentage of disability. Hence, this Court is inclined to fix a sum of Rs.5,000/- per percentage of disability. Further, considering the fact that the percentage of disability vary from doctor to doctor, this Court is inclined to reduce the same and fixes the percentage of disability at 30%. Therefore, the compensation awarded under the head partial permanent disability stands enhanced to a sum of Rs.2,10,000/- (30 x Rs.7,000/- = Rs.2,10,000/-).

9. Further, the Tribunal had awarded a sum of Rs.7,59,268/- towards medical bills; Rs.5,000/- towards pain and sufferings; Rs.5,000/- towards transportation expenses and Rs.5,000/- towards nutrition expenses. This



C.M.A.No.3143 of 2021

Court finds that the compensation awarded under the head medical bills is just and reasonable and the same is confirmed. However, insofar as the compensation awarded towards pain and sufferings, transportation expenses and nutrition expenses are concerned, this Court feels that same are on the lower side and the same are enhanced to a sum of Rs.50,000/-, Rs.10,000/- and Rs.20,000/- respectively. Since no compensation has been awarded towards attender charges, this court awards a sum of Rs.10,000/- under this head.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Partial Permanent Disability (Rs.7,000/- x 30%)	1,05,000/-	2,10,000/- (enhanced)
2	Medical Bills as per Ex.P.12	7,59,268/-	7,59,268/-
3	Pain and Sufferings	5,000/-	50,000/- (enhanced)
4	Transportation Expenses	5,000/-	10,000/- (enhanced)
5	Nutrition Expenses	5,000/-	20,000/-



S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
			(enhanced)
6	Attender charges	-	10,000/- (awarded)
	Total	8,79,268/-	10,59,268/-
	Less : 15% contributory negligence	1,31,890/-	-
	Total	7,47,378/-	10,59,268/-

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.7,47,378/-** to **Rs.10,59,268/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.160 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the appellant through RTGS within a period of two



C.M.A.No.3143 of 2021

(2) weeks thereafter upon production of proof with regard to payment of

Court fee on the enhanced compensation by the appellants. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount. No costs.

02.12.2024

(¹/₂)

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

sp

To

The Motor Accident Claim Tribunal / Principal District Judge, Namakkal.



WEB COPY



C.M.A.No.3143 of 2021

M.DHANDAPANI,J.,

sp

C.M.A.No.3143 of 2021

02.12.2024

($\frac{1}{2}$)