



CM.A.No.3151 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON: 09.02.2024

PRONOUNCED ON: 16 .02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.3151 of 2021

1.M.Hemachandran

...Appellant

Vs.

1.P.Vinothkumar

2. United India Insurance Company, Limited

Rep., by its Manager, Salem

3.K.S.Palanisamy

(Notice to R1 & R3 may be dispensed with
for the time being and separate petition has been
filed for the same)

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, as amended by Act 54 of 1994 to set aside the decree and judgment dated 30.11.2020 made in M.C.O.P.No.123 of 2017 on the file of Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Bhavani.

For Appellant : Mr.C.Kulanthaivel

For RR1 & R3 : Notice dispensed with



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For R2 : Mr.C.Paranthaman

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JUDGMENT

The above Civil Miscellaneous Petition is directed against the judgment and decree dated 30.11.2020 passed in M.C.O.P.No.123 of 2017 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Bhavani.

2. Shortly stated, on 01.12.2016 at about 11.30 a.m near Bhavani to mettur main road near Karuppanaickenpalayam, the petitioner was driving his mini auto bearing Registration No. TN-39-AD-2923 towards North to South of the road near Saint Marry's School. At that time, the bus bearing Registration No.TN-36-S-7979 which was driven by the driver in a rash and negligent manner without following traffic Rules and Regulations in high speed that is opposite direction and hit against the petitioner. Due to the said accident the petitioner was sustained simple and grievous injuries all over the body. Immediately after the accident the petitioner was taken and admitted in Ganga Hospital at Coimbatore, as in patient for three months. The petitioner spent a sum of Rs.6,00,000/- for medical expenses and attender charges. FIR



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was registered against the driver of the bus in Crime No.671 of 2016 under Section 279, 337 of IPC.

3. The 2nd respondent/Insurance Company in its counter would submit that the 2nd respondent/Insurance Company has not issued any policy of insurance for the vehicle TN 36 /S 7979 in favour of the 1st respondent, owner of the bus on the date of accident. There is no brevity of contract between the respondents 1 and 2 and therefore, the 2nd respondent is not liable to indemnify, the 1st respondent against the claim made by the petitioner. The 1st respondent is alone liable to pay the said compensation. The petitioner had not sustained any grievous injury or permanent disability as alleged. The income of the petitioner is denied. Hence, prayed for dismissal of the claim petition.

4. Accordingly, the claims Tribunal framed four issues. It came to the conclusion that the petitioner and the driver of the bus bearing registration No.TN 36 S 7979 are responsible for the accident and apportioned 20% contributory negligence on the part of the petitioner. Aggrieved by this, the present appeal is preferred by the claimant.



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5. Through this appeal, award has been challenged on many grounds and mainly focused on fixing of 20% contributory negligence on the part of the claimant and the challenge was also made on the ground of inadequate compensation.

6. The learned counsel appearing for the claimant would submit that the Tribunal erred in concluding that the claimant is also responsible for the accident and erroneously apportioned 20% contributory negligence on the part of the claimant. His further submission is that, the claimant has suffered functional disability, which is assessed through Ex.X1 and C1 disability certificates issued by a private Medical Board and by the Government Medical Board. According to Ex.X1 the private Medical Board assessed 25% only for head injury and under Ex.C.1 the Government Medical Board assessed the fracture sustained by the claimant as 25% disability. The Government Medical Board failed to assess the IQ of the claimant by subjecting him to IQ test. The claimant is aged about 28 years and unmarried and therefore, the Tribunal ought to have assessed the functional disability by adopting multiplier method. His further contention is that the Tribunal failed to award future medical expenses when the facts remains that the claimant



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requires implant removal surgery which is estimated approximately to the tune of Rs.60,000/-. The Tribunal failed to award compensation towards attender charges, loss of amenities, pain and sufferings, nutrition, loss of income during treatment period and transport charges by considering the nature of injuries, age of the claimant, avocation and period inpatient treatments.

7. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company would submit that the claimant was not having a valid driving licence to drive the vehicle on the date of accident and therefore, the Tribunal has rightly apportioned 20% for contributory negligence. He would further argue that the Tribunal after perusing Ex.C1 and Ex.X1 certificate has rightly fixed the disability at 25% and the arguments putforth on the side of the claimant that the claimant is suffering from lesser IQ due to the head injury sustained by him without any materials on record and multiplier ought to have been applied by the Tribunal is unsustainable.

8. Heard on both sides, records perused.



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9. On the question of contributory negligence, it is admitted fact that at the time of the accident, the claimant did not have a driving licence. It is the contention of the learned Counsel for the claimant that the Tribunal erred in fixing 20% contributory negligence on the part of the claimant, in the absence of evidence that the claimant was driving the vehicle in a rash and negligent manner. This aspect has been considered in a judgement of the Hon'ble Supreme Court in Sudir Kumar case reported in **2008 12 SCC 436** where it was held as follows:

9. "If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the Courts below that it was the driver of the mini truck offending vehicle who was driving rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.



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10.The matter might have been different if

*by reason of the rash and negligent driving of the
claimant, the accident had taken place"*

10. The ratio in the said judgment is squarely applicable to the facts of the present case. In the absence of evidence that the injured was driving the vehicle in a rash and negligent manner is unsustainable. Moreover, the FIR is also registered only against driver of the offending vehicle. Hence, the Tribunal erred in apportioning 20% contributory negligence on the part of the deceased. The same is unsustainable.

11. With regard to disability fixed by the Tribunal, the Tribunal has rightly rejected the disability certificate under Ex.X.1 by stating that the same cannot be relied upon since the doctor who had issued Ex.X.1 certificate was not examined and further, the Doctors attached to Ganga Hospital are not psychologist. The Tribunal has rightly held that since the petitioner failed to prove that the petitioner has sustained functional disability and based on Ex.C.1 disability certificate and Ex.P.16 photographs fixed 25% disability. No perversity or infirmity found in the order of the Tribunal in this regard.



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Moreover, there is nothing on record to establish that the petitioner is suffering from less IQ after the accident. Therefore, the disability fixed at 25% by the Tribunal is confirmed. Considering the nature of the injury and the age of the injured, this Court inclined to award a sum of Rs.5000/- towards attender charges and Rs.5000/- for loss of amenities.

12. The compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	80,000	1,00,000/-	Enhanced
2.	Disability	1,12,500	1,12,500/-	confirmed
3.	Medical Expenses	4,61,400	4,61,400	confirmed
4.	Partial loss of earning	45,000	45,000	confirmed
5.	Transportation	15000	15000	confirmed
6.	Extra-Nourishment	10000	10000	confirmed
	Attender charges		5000	Granted
	Loss of amenities		5000	Granted
	Total	7,23,900	7,53,900	Enhanced by 30,000



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,79,200/- is hereby enhanced to Rs.7,53,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

16 .02.2024

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. The IV Additional District and Sessions Judge, Bhavani.

Motor Accident Claims Tribunal,



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2. The Section Officer,
VR Section,
High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

Pre-delivery judgement made in

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