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CMA No.2944 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CMA No.2944 of 2024

Samildurai

... Appellant

Vs.

1.Kaliyamoorthi
2.The Branch Manager
United India Insurance Co.Ltd.,
50A, Pallivasal Street,
Perambalur - 621 212

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 13.02.2023 passed in M.C.O.P.No.513 of 2019 (Filing No.MCOP/1002/2019) (CNR No.TNPB 01003077-2019) on the file of the Motor Accident Claims Tribunal (Principal District Court) Perambalur.

For Appellant : Mr.P.Mani
For Respondents : Mr.D.Bhaskaran for R2
R1-notice dispensed with



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JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court.

2. The case of the claimant is that when one Maruthamuthu was riding a two wheeler bearing Reg. TN 46 U 2599, the claimant was travelled as a pillion rider and when he was proceeding from south to north direction on the extreme left side of Ariyalur-Perambalur main road, the first respondent parked the lorry bearing Reg. No.TN 36 T 3439 AX 2873 on the western side of the road without any indicator. Thereby, the two wheeler hit on the backside of the lorry. Due to the sudden impact, both the rider and the pillion rider were thrown away and sustained previous injuries. In the said accident, the driver of the two wheeler died on the spot and the appellant has sustained fracture on his right shoulder, jaw, left eye-brow and head and 14 sutures were done in the jaw and three sutures were done in the left eye-brow and two teeth were broken and also sustained head injury. Immediately, the appellant was admitted in the Government Hospital and then taken to Q Med



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Hospital, Trichy and he spent a sum of Rs.5,00,000/- towards medical expenses. The medical board assessed 38% 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 due to hitting the stationed lorry and fixed contributory negligence as 30% and awarded a sum of Rs.2,91,656/- under various heads with interest at the rate of 7.5% per annum.

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

5. The learned counsel for the appellant submitted that the injured



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was aged about 26 years at the time of the accident and he was doing agricultural work and having milchy cows. Due to the accident, he is not able to continue his avocation. The medical board assessed the disability at 38% whereas the Tribunal has awarded a sum of Rs.1,90,000/- towards disability which is very meager and also the Tribunal has awarded very less compensation in respect of extra nourishment, pain and suffering and loss of income during treatment period. Further, the Tribunal ought to have considered the fact that the appellant was only a pillion rider and ought not to have deducted 30% of the compensation towards contributory negligence.

6. The learned counsel appearing for the 2nd respondent/insurance company submitted that the FIR was registered as against the first respondent owner of the lorry. Ex.R1/Rough Sketch makes it clear that the first respondent has parked his lorry on the extreme left side of the road and the driver of the two wheeler hit on the backside of the lorry in a rash and negligent manner and died on the spot. He further submitted that when a criminal case as against the lorry driver was closed as action drop, the accident was happened due to fault of the driver of the two



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wheeler. Hence, the Trial Court has erroneously fixed 70% contributory negligence on the part of the lorry driver warrants interference by this Court. After considering the evidences and materials, the Tribunal has awarded compensation, which is perfectly in order.

7. Heard the learned counsel for appellant/claimant and the learned counsel for insurance company/2nd respondent.

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

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

10. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation and the contributory negligence, the present appeal has been filed.



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11. According to the appellant, the first respondent who is the driver of the lorry parked the vehicle on the extreme left side of the Ariyalur-Perambalur main road without any indicator. The claimant was examined as PW2 and during his cross examination, he admitted that there were lights in the petrol bunk, but at the time of accident, there was no light. Similarly, the accident was not happened in front of the petrol bunk and it was happened some distance away from the petrol bunk. Further, even if the lights were on in the petrol bunk, it may not have reached the place of occurrence and hence, two wheeler hit on the backside of the lorry and therefore, he sustained injuries. It is the main ground of the appellant that the Tribunal has awarded very meager amount in respect of disability, extra nourishment and loss of income, pain and suffering during the treatment period. The appellant is 26 years and doing agricultural work and having milchy cows and he was earning a sum of Rs.20,000/- per month. Even then the Tribunal has awarded a sum of Rs.5,000/- per percentage for the disability which is very meager and the amount awarded for medical expenses during the treatment period is in order, which does not warrant interference by this Court. Considering the nature of injuries and the date of the accident, this Court



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is inclined to enhance a sum of Rs.3,000/- per percentage for the disability (Rs.8,000/-X 38%) and the disability would be arrived at Rs.3,04,000/- as he could not continue his avocation as an agriculturist and the Court below has awarded a sum of Rs.10,000/- for pain and sufferings, which is very meagre and the same is enhanced to Rs.75,000/- and the amount awarded for loss of income, extra nourishment and transportation are enhanced by Rs.20,000/-, Rs.15,000/- and Rs.10,000 respectively.

12. Considering the nature of injury, this Court is inclined to award a sum of Rs.10,000/- as attender charger. As far as contributory negligence is concerned, the Trial Court had rightly held that rider of the two wheeler was died on the spot on hitting the stationed vehicle itself, which clearly shows that the rider of the two wheeler had driven the vehicle in a rash and negligent manner. Therefore, the Tribunal has rightly fixed 30% contributory negligence against the driver of the two wheeler. Hence, the same does not warrants any interference by this Court.



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13. Accordingly, the award passed by the Tribunal stands modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Disability	1,90,000	3,04,000
Loss of Income	19,500	20,000
Pain and Suffering	10,000	75,000
Extra Nourishment	5,000	15,000
Transportation	5,000	10,000
Attender Charges	-	10,000
Medical Expenses	1,87,151	1,87,151
Total	4,16,651	6,21,151
(-) 30% contributory negligence of the two wheeler rider		1,86,345
Total	2,91,656	4,34,806

14. The compensation awarded by the Tribunal at Rs.2,91,656/- is enhanced to Rs. 4,34,806/-. However, contributory negligence fixed by the Tribunal is perfectly in order and 30% has to be deducted towards contributory negligence from the total compensation. Hence, the second respondent Insurance company is directed to deposit a sum of



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Rs. 4,34,806/- (Rupees four lakh thirty four thousand eight hundred and six only), less the amount already deposited, together with interest at 7.5% p.a. 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 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.

15. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs.

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msv

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

To

Motor Accident Claims Tribunal (Principal District Court) Perambalur.



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M.DHANDAPANI.,J

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