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C.M.A.No.2931 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2931 of 2024

Surya

... Appellant

Vs.

1. Raju
S/o.Loganathan

2.The HDFC ERGO General Insurance Company Limited,
D.No.356/1, Empire Arcade, Omalur Main Road,
Opp. New Bus Stand,
Salem District-636 004.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.11.2023 made in M.C.O.P.No.815 of 2021 on the file of the Motor Vehicle Accident Claims Tribunal, Chief Judicial Magistrate, Salem.

For Appellant : Mr.C.Paraneedharan

For Respondents : Mr.N.Somasundar for R2



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J U D G M E N T

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The appellant / claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem, in M.C.O.P.No.815 of 2021, dated 06.11.2023, and aggrieved by the contributory negligence of 50% attributable on him, has preferred this appeal.

2. On 11.10.2020 at about 08.30 hrs, when the appellant/claimant was riding Bajaj Pulsar Motor Cycle bearing Reg.No.TN 88 W 1347, Jodarpalayam-Vellur Road, Iyyampalayam Bus Stop, TVS Juipster Motorcycle bearing Reg.No.TN 88 W 5261, was driven by the first respondent in uncontrollable speed without following the traffic rules dashed against the claimant and caused the accident, due to which, the appellant sustained injuries all over the body. It is under these circumstances, the claim petition came to be filed by the appellant/claimant before the Tribunal seeking for compensation against the respondents/owner and the insurer of the vehicle.



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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 FIR in Crime No.597 of 2020 was admittedly registered against the first respondent and it was closed for the reason that the accident happened due to the negligence of the appellant/claimant and the appellant did not examine any eye witness to prove that the negligence was on the part of the first respondent and it was found that the accident was happened on head on collision of both vehicles, hence, the appellant was also equally contributed to the accident and thereby, 50% negligence was attributed on the appellant. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.5,48,039/- under various heads, after deducting 50% towards contributory negligence of the appellant/claimant in the following manner:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>
1	Pain and Suffering	Rs.2,50,000/-



<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>
2	Loss of convenience	Rs.2,00,000/-
3	Medical Expenses as per Ex.P4	Rs.4,71,078/-
4	Future Medical Expenses	Nil
5	Attendant Charges	Rs.25,000/-
6	Disability	Nil
7	Temporary loss of income	Rs.1,00,000/-
8	Transport to Hospital	Rs.25,000/-
9	Extra Nourishment	Rs.25,000/-
	Total	Rs.10,96,078/-
	Contributory negligence 50%	Rs.5,48,039/-
	Compensation payable	Rs.5,48,039/-

The above compensation was directed to be paid by the second respondent along with interest at 7.5% p.a.

4. The appellant/claimant, not being satisfied with the quantum of



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compensation awarded by the Tribunal and 50% contributory negligence attributable on him, has filed this appeal seeking compensation.

5. The learned counsel appearing for the appellant submitted that the accident happened due to rash and negligent driving of the first respondent, however, 50% of contributory negligence was fixed against the appellant and the Tribunal has awarded very meager compensation. Hence, the learned counsel for the appellant prays for enhancement of compensation.

6. The first respondent remained *ex-parte* before the Tribunal.

7. Per contra, learned counsel appearing for the second respondent / Insurance company submitted that the accident took place only the negligence of the appellant/claimant, and therefore, the Tribunal has rightly fixed 50% contributory negligence on the appellant and the compensation awarded by the Tribunal is also on the higher side which does not require



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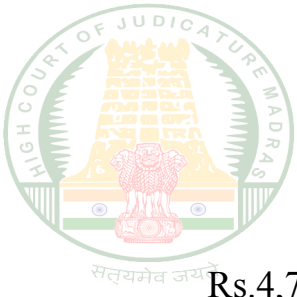
any interference by this Court. Hence, he prays for dismissal of this appeal.

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8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. With regard to the contributory negligence that was fastened against the appellant, though FIR was registered against the first respondent, it was closed for the reason that the accident happened due to the negligence of the appellant/claimant and the appellant did not examine any eye witness to prove that the negligence was on the part of the first respondent and the accident was happened on head on collision of both vehicles, hence, 50% negligence was fixed on the petitioner and the same does not require any interference of this Court.

10. Coming to the quantum of compensation, a sum of



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Rs.4,71,078/- was awarded towards medical expenses as per Ex.P4/Medical Bills marked by the appellant and the compensation awarded under the other heads, namely, pain and suffering, loss of amenities, attender charges, loss of income, transport expenses to the Hospital, Extra Nourishment, which would come around to Rs.6,25,000/- also appears to be reasonable. However, a sum of Rs.4,71,078/- awarded towards medical expenses shall be borne by the second respondent in full. Insofar as the balance amount of Rs.6,25,000/- awarded under the other heads is concerned, since the appellant has also contributed to the accident, the negligence is equally to be shared between the appellant and the respondents. Accordingly, fixing the contributory negligence at 50% on the appellant/claimant, the appellant would be entitled for a compensation of Rs.3,12,500/-, which would be 50% of a sum of Rs.6,25,000/-. Accordingly, the amount payable by the second respondent to the appellant in respect of the share relating to the accident would be Rs.7,83,578/-.

11. In the result, this Civil Miscellaneous Appeal is allowed in part



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and the compensation awarded by the Tribunal at Rs.5,48,039/- is hereby enhanced to Rs.7,83,578/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.815 of 2021 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. Insofar as the enhanced compensation is concerned, the claimant will not be entitled for interest for the period of delay of 157 days as was ordered by this Court in C.M.P.No.17008 of 2024, dated 21.10.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.



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07.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

ssb

To

1. The Motor Vehicle Accident Claims Tribunal
Chief Judicial Magistrate, Salem.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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