



C.M.A.No.3576 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 11.03.2024	Pronounced on 26.03.2024
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3576 of 2021

Sakthivel (37), S/o.Ponnusamy
Residing at D.No.7/28-2, Nrappanchavadi
Morur East, Sankari R.S., Sankari Taluk
Salem District 637 301

... Appellant

Vs.

1.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram.

2.Sakthivel, S/o.Ponnusamy
Residing at D.No.7/28-2, Nrappanchavadi
Sankari Taluk
Salem District 637 302

3.The Bharti Axa General Insurance Co. Ltd.,
1st Floor, Ferns Icon, Survey No.28, Doddnekundi
Off Outer Ring Road, Bangalore, Karnataka 560 037

Branch Office: 2nd Floor, New No.4B,
Old No.166-167, Veerabadra Street
Opp: Hotel Oxford, Erode 638 001

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the



C.M.A.No.3576 of 2021

Judgment and Decree in MCOP.No.647 of 2017, dated 07.08.2021, on the file of the Motor Accident Claims Tribunal/Special District Judge Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.T.Chandrasekaran (for R1)

Mrs.A.Salomi (for R3)

J U D G M E N T

The Appeal has been filed against the Judgment and Decree made in MCOP.No.647 of 2017, dated 07.08.2021, on the file of the Motor Accident Claims Tribunal/Special District Judge Court, Erode.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed MCOP.No.647 of 2017, on the file of the Motor Accident Claims Tribunal/Special District Judge Court, Erode, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 06.03.2016. The Tribunal has awarded a sum of Rs.2,20,050/- with interest at the rate of 7.5%. Aggrieved against the same and seeking



C.M.A.No.3576 of 2021

enhancement, he has preferred this Appeal.

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4.The factum of the accident and manner of the accident are not under challenge in this Appeal. The Tribunal has fixed the contributory negligence on the part of the rider of the two wheeler and the driver of the bus belonged to the Transport Corporation at the ratio of 50:50, challenging the ratio of contributory negligence fixed upon the driver as well as quantum, the claim Petitioner has filed the Appeal.

5.During trial, on the side of the claim Petitioner, PW1 to PW3 were examined, Ex.P.1 to Ex.P.11(s) were marked and on the side of the Respondents, RW1 to RW3 were examined, Ex..R.1 to Ex.R.6 were marked. Ex.C.1 was marked as court document.

6.Heard the learned counsel for the claim Petitioner, learned counsel for the Transport Corporation and learned counsel for the Insurance Company.

7.Based upon the oral and documentary evidences, the trial Court has come to the conclusion that the accident taken place due to the rash and



C.M.A.No.3576 of 2021

negligent driving of both the parties. At the time of the accident, the rider of the two wheeler bearing Reg. No. TN 52 J 4120 has not possessed valid driving license and also he came on the wrong side of the road, which is a one way traffic area and accordingly, the Tribunal has fixed 50% contributory negligence on the part of the rider of the two wheeler and 50% on the part of the driver of the bus.

8.After perusing Ex.R1, Ex.R4, Ex.R5 & Ex.R6 and evidence of RW2/Assistant from the office of RTO, one Loganathan, who is the rider of the two wheeler does not possess any valid driving licence. Further from the evidence of PW2 and Ex.P8, I find that the two wheeler was going on the wrong side, in which he ought not to have gone and hence the Tribunal has rightly fixed 50% contributory negligence on the part of the rider of the two wheeler. Such a finding is based upon the independent witness/RW2 and Ex.P8, Ex.R1, Ex.R4 to R6 and hence the order of the Tribunal in this regard cannot be termed as unreasonable. Hence the contributory negligence fixed by the Tribunal is hereby confirmed.

9.On the point of quantum of compensation, the claim Petitioner has filed



C.M.A.No.3576 of 2021

WEB COPY

Ex.P.2/discharge summary to show that he was taken treatment as inpatient for 12 days and he suffered injuries to the extent of 10% disability. The date of accident is 06.03.2016 and therefore, the Tribunal has rightly fixed Rs.5,000/- per percentage and granted a sum of Rs.50,000/- towards disability. Based on Ex.P.3/Medical bills, the Tribunal has awarded a sum of Rs.90,050/- towards Medical expenses. The Tribunal has awarded a sum of Rs.30,000/- towards pain and sufferings, a sum of Rs.20,000/- towards loss of earning, the same are hereby confirmed.

10.The Tribunal has awarded a sum of Rs.10,000/- each towards attender charges, transportation and nutrition & extra nourishment. The same are hereby enhanced to Rs.15,000/- each.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Permanent disability	50000
2	Pain and sufferings	30000
3	Attender charges	15000
4	Transportation charges	15000
5	Nutrition and extra nourishment	15000
6	Medical expenses	90050
7	Loss of earning	20000
	Total	235050



C.M.A.No.3576 of 2021

The Tribunal has awarded 7.5% interest. The same is also hereby confirmed.

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11.In total, the claim Petitioner is entitled to a sum of Rs.2,35,050/-
(Rupees two lakh thirty five thousand and fifty only).

12.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.2,20,050/- to Rs.2,35,050/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.



C.M.A.No.3576 of 2021

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

26.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Special District Judge
Motor Accident Claims Tribunal
Special District Judge Court
Erode.



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C.M.A.No.3576 of 2021

RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

C.M.A.No.3576 of 2021

Dated: 26.03.2024