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C.M.A.No.2170 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

C.M.A.No.2170 of 2023

C.Sureshkumar
S/o Chinnathambi

..Appellant

Vs.

1. Akilan
S/o Aruchamy

2. Aruchamy,
S/o Subbiah

3. The United India Insurance Co.Ltd.,
No.144-B, Kalpana Road,
Udumalpet - 642 126

..Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 05.09.2022 in M.C.O.P.No.322 of 2019 on the file of Motor Accidents Claims Tribunal (Subordinate Judge) at Dharapuram.



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For Appellant : Mr.R.Nalliyappan

For Respondent : No appearance for R1 & R2
Mr.P.Sankaranarayanan for R3

J U D G M E N T

(The order of the Court was made by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the injured claimant against the judgment and decree dated 05.09.2022 made in M.C.O.P.No.322 of 2019 on the file of Motor Accidents Claims Tribunal (Subordinate Judge) at Dharapuram, by which, the Tribunal has awarded a compensation of Rs.13,56,000/- with interest at the rate of 7.5% p.a. From the date of the petition till the date of deposit.

2.The appellant is the claimant in M.C.O.P.No.322 of 2019 on the file of Motor Accident Claims Tribunal,(Subordinate Judge) at Dharapuram. He filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.12.2018.

3.According to the appellant, on the date of accident i.e., on 05.2.2018 at about 02.00 p.m., the claimant was riding his Hero Glamor Motor Cycle bearing Registration No.TN 61 M 6526 from East to West



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direction along Dharapuram to Karur Road near Soman Kottai Privu along with one Kumar as a pillion rider. While the appellant was proceeding near Soman Kotai Pirivu, on the left extreme side of the road, a Bolero Jeep bearing Registration No.TN 41 AE 9500 driven by its driver in a rash and negligent manner from West to East direction, dashed on the said Motor cycle. As a result of the sudden accident, the appellant and the pillion rider Kumar were thrown away and both fell down. The appellant sustained grievous injuries all over the body and immediately, he was taken and admitted at Vel Hospital at Dharapuram as an in-patient and he underwent treatment from 15.12.2018 to 28.04.2019. Hence, the appellant filed the above said claim petition claiming compensation against the respondents, viz., driver of the vehicle, owner of the vehicle and the Insurance Company respectively.

4.The 1st respondent/ driver of the Bolero Jeep and the 2nd respondent/owner of the Bolero Jeep, remained exparte before the Tribunal.

5. The 3rd respondent/Insurance Company, being insurer of Bolero Jeep owned by the 2nd respondent, filed counter statement, denying the averments made in the claim petition and stated that the appellant made a



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sudden cross of the road without making any signal and hence, the accident was due to the rash and negligence act of the appellant. He did not wear helmet and hence, he is not entitled to compensation. The 3rd respondent has also denied the age, avocation, income and nature of injuries suffered by the appellant. The compensation claimed by the appellant is excessive and prayed to dismiss the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and marked seventeen documents as Exs.P1 to P17. On the side of the 3rd respondent/Insurance Company, one Mr.Ganeshkumar was examined as R.W.1 and marked three documents as Exs.R1 to R3. The appellant was referred to the District Medical Board which has assessed the disability to be 70% partial permanent disability and the said certificate was marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the appellant had contributed 20% negligence and the 1st respondent had contributed 80% negligence and awarded a compensation of Rs.13,56,000/- with 7.5% interest.

8. The appellant has challenged the award stating that fixation of 20% contributory negligence on the appellant, without any evidence to



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substantiate the same, is erroneous and the amount awarded for 70% disability is meager. The learned counsel for the appellant contended that the doctor had advised to amputate the right leg to avoid infection and the Court below ought to have awarded some amount on the head of future medical expenses and expenses for artificial foot.

9. Learned counsel appearing for the 3rd respondent/Insurance Company contended that the accident had occurred only due to the sudden crossing of the road by the appellant without making any signal. Further, the appellant was riding the motor bike in a rash and negligent manner without wearing helmet and he would state that the award passed by the Tribunal is excessive. Hence, he would pray to dismiss the appeal.

10. Heard the learned counsel appearing for the appellant as well as the 3rd respondent/Insurance Company and perused the entire materials available on record.

11. The accident has occurred in the middle of the road and it is a head on collusion. If the appellant would have travelled on the left side of the road and the 1st respondent would have driven the vehicle in medium speed, the accident could not have taken place. Therefore, we are of the view that the Tribunal had rightly fixed 20% contributory negligence on



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the part of the appellant and 80% contributory negligence on the part of the 1st respondent. We find no infirmity in the said finding and thus, we are not inclined to interfere with the same.

12. As far as 70% disability is concerned, the Tribunal, taking into account the cost of living during the relevant period. As the accident had occurred on 05.12.2018 i.e., end of 2018, had fixed Rs.6,000/- per percentage. Thus, for 70% disability, the Tribunal has rightly awarded a sum of Rs.4,20,000/- (R.6000 x 70). Therefore, the amount awarded by the Tribunal on the head of partial permanent disability needs no interfere by this Court. Insofar as the contention of the learned counsel for the appellant that some amount ought to have given on the head of future medical expenses and expenses for artificial foot is concerned, already the Tribunal had awarded a sum of Rs.9,23,701/- under the head of Medical expenditures and Rs.50,000/- for Attender's charges, Transportation & Extra-nourishment charges. We are of the opinion that sufficient amount has been awarded for medical expenses and thus, we are not inclined to award any further amount for medical expenses.

13. In view of the above reasons, this Civil Miscellaneous Appeal



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is dismissed. The sum of Rs.13,56,000/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed.

The 3rd respondent is directed to deposit the entire award amount 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 entire award amount along with interest and costs. No costs.

(J.N.B,J.) (R.K.M., J.)
19.08.2024

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accidents Claims Tribunal
(Subordinate Judge)
at Dharapuram.



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J. NISHA BANU, J.
and
R.KALAIMATHI, J.

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