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CMA No.518 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.518 of 2024

Saravanan

..Petitioner/Appellant

.Vs.

1.Arunagirinathan

2.Bomman

3.United India Insurance Company Limited
Rep.by its Divisional Office-II (HUB)
104-A, Peramanoor Main Road
Salem-7.

4.Chandru @ Chandrakumar

5.Veeran

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount and fix the entire liability on the 3rd respondent made in judgment and decree dated 23.01.2023 made in MCOP.No.780 of 2021, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court No.2, Salem.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : Mr.R.Rajesh [R3]



CMA No.518 of 2024

WEB COPY

ORDER

This appeal has been filed challenging the award passed by the Motor Accidents Claims Tribunal, Special Subordinate Judge, Salem, in MCOP.No.780 of 2021, dated 23.1.2023, wherein the appellant/claimant is seeking for enhancement of compensation.

2.The case of the appellant is that on 14.2.2021 at about 11.15 pm, the appellant was travelling as a pillion rider in a motorcycle at Pallipalayam to Tiruchengode Road. When the vehicle was near Vikram theater, a goods vehicle which was driven by the 1st respondent in a rash and negligent manner hit the two wheeler in which the appellant was travelling as a pillion rider and as a result, the appellant sustained multiple grievous injuries all over his body.

3.The appellant was admitted to the hospital and he underwent treatment as an inpatient for 12 days. Disability suffered by the appellant was also assessed at 40% by the medical board. The appellant who is a load man by avocation, was not able to attend to his job and as a result, he also sustained loss of income. It is under these circumstances, the appellant filed the claim petition before the Tribunal seeking for compensation.



CMA No.518 of 2024

4.The Motor Accident Claims Tribunal found that the entire incident had taken place only due to the rash and negligent driving on the part of the 1st respondent hence, the negligence was attributed to the 1st respondent. The 2nd respondent is the owner of the vehicle. While assessing the compensation, the Tribunal granted a total compensation of Rs.7,46,980/- in the following manner:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent Disability (40%) [40 * Rs.5000]	Rs. 2,00,000/-
2.	Pain and suffering	Rs. 40,000/-
3.	Loss of amenities	Rs. 40,000/-
4.	Medical expenses	Rs. 3,25,980/-
5.	Loss of income (6 months x Rs.10,000)	Rs. 60,000/-
6.	Transportation charges	Rs. 25,000/-
7.	Nourishment charges	Rs. 25,000/-
8.	Attendant Charges	Rs. 30,000/-
9.	Damage to cloths	Rs. 1,000/-
	Total	Rs. 7,46,980/-

5.The claimant has filed this appeal mainly on the ground that he had suffered functional disability due to the accident and hence, the tribunal ought to have applied the multiplier method. That apart, the Tribunal had also deducted 15% from the total compensation on the ground of contributory negligence since the driver of the two wheeler in which the appellant was driving as a pillion rider, did



not possess a valid driving license. The learned counsel submitted that driving without a valid license by itself cannot lead to contributory negligence and the driver cannot be attributed with negligence.

6.The learned counsel for the Insurance Company submitted that the Tribunal has fixed a just and fair compensation which does not require the interference of this Court. The learned counsel submitted that the appellant has not established before the Tribunal that he suffered any functional disability and therefore, the Tribunal was right in fixing the compensation adopting percentage method considering the percentage of disability suffered by the appellant. The learned counsel further submitted that a person is not supposed to drive the vehicle without a valid driving license and hence, the Tribunal was perfectly right in deducting 15% towards contributory negligence and the Tribunal has also taken into consideration the judgment of this Court in **M.Ramya V. G.Ekambaram** reported in **2021 (1) TN MAC 451** to support this conclusion. In view of the same, the learned counsel submitted that the appeal is devoid of merits and the same is liable to be dismissed by this Court.

7.This Court has considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.



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8. In the instant case, there is no dispute with regard to the fact that the appellant was the pillion rider in the two wheeler. The Tribunal has come to a categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent who was driving the goods vehicle. The limited question is as to whether the Tribunal was right in deducting 15% towards contributory negligence after having found that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent. It is even more significant to note the fact that the appellant was merely a pillion rider in this case.

9. The answer to the above issue is no longer *res integra*. The Apex Court in **Dinesh Kumar V. National Insurance Company Limited and Others** reported in **2018 1 SCC 750**, has categorically held that driving vehicle without a license by itself cannot lead to an assumption that there was negligence and the driver cannot be contributed to the negligence. In the case in hand, the Tribunal has come to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent and therefore, the fact that the driver of the two wheeler did not possess a valid license, by itself cannot be a ground to assume that there was negligence on the part of the driver of the two wheeler and consequently attribute negligence on his part. Therefore, this Court is inclined to interfere with the finding of the Tribunal to the effect that 15% of contributory



negligence must be deducted from the total compensation payable to the appellant.

10.The next issue into which this Court wants to render its finding is regarding the compensation that was fixed for disability. The appellant had suffered 40% disability which is evident from Ex.C.1. The appellant has not established that he suffered from any functional disability. That is the reason why the Tribunal has not applied the multiplier method in this case. Whether the appellant is suffering functional disability is not a matter of assumption and it has to be proved.

11.The petitioner has suffered the following injuries due to the accident.

- “1. G-III B Compound communitted patella fracture with bone loss right with
patella tendo achilis
2. MCL avulsion fracture right
3. Fracture lateral femoral condyle”

12.The medical board on assessing the above injuries has fixed the permanent disability at 40%. The Tribunal has fixed the compensation under the head of disability by fixing Rs.5,000/- per percentage of disability suffered by the appellant. This method that was adopted by the Tribunal cannot be interfered. However, in the instant case, the accident had taken place in the year 2021 and there was a rise in the cost of index and this Court has held that after the year 2017, a sum of Rs.7,000/- must be fixed per percentage. Taking that into consideration, instead of Rs.5,000/- fixed by the Tribunal per percentage, this Court is inclined to enhance the same to of Rs.7,000/- per percentage of disability.



CMA No.518 of 2024

WEB COPY

13.Insofar as the other heads under which the Tribunal has fixed the compensation, this Court finds that the same is just and fair and it does not require the interference of this Court.

14.In the light of the above discussion, the compensation awarded by the Tribunal is fixed in the following manner:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent Disability (40%) (40* Rs.7000)	Rs. 2,80,000/-
2.	Pain and suffering	Rs. 40,000/-
3.	Loss of amenities	Rs. 40,000/-
4.	Medical expenses	Rs. 3,25,980/-
5.	Loss of income (6 months x Rs.10,000)	Rs. 60,000/-
6.	Transportation charges	Rs. 25,000/-
7.	Nourishment charges	Rs. 25,000/-
8.	Attendant Charges	Rs. 30,000/-
9.	Damage to cloths	Rs. 1,000/-
	Total	Rs.8,26,980/-

15.The compensation awarded by the Tribunal at Rs.7,46,980/- is enhanced to Rs.8,26,980/- and the compensation is payable without any deduction for contributory negligence with interest at the rate of Rs.7.5% from the date of filing



CMA No.518 of 2024

of the petition till the date of realisation. The manner in which the compensation has to be paid has already been stated by the Tribunal and it shall be followed.

16.In the result, this Civil Miscellaneous Appeal is allowed to the extent indicated herein above. It is made clear that the Insurance Company is not liable to pay the interest for the period of delay and the same was made clear by this Court while passing the order in CMP.No.23112 of 2023 in CMA SR.No.123231 of 2023, dated 30.1.2024. No costs.

01.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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CMA No.518 of 2024

To

- 1.United India Insurance Company Limited
Rep.by its Divisional Office-II (HUB)
104-A, Peramanoor Main Road
Salem-7.
- 2.Motor Accident Claims Tribunal
Special Subordinate Judge Court No.2,
Salem.

Copy to:-

The Section Officer
VR Section, High Court,
Chennai.



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CMA No.518 of 2024

N. ANAND VENKATESH., J

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CMA No.518 of 2024



WEB COPY



CMA No.518 of 2024

01.04.2024