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C.M.A.No.3393 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3393 of 2024

Jeevan Prasath

...Appellant

Vs.

1. R.Karthik
2. M/s.United India Insurance Company Limited,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal – 637 001.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 28.11.2019 in MCOP.No.726 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.Thangaraju.C

For Respondents : Mr.J.Chandran for R2



C.M.A.No.3393 of 2024

WEB COPY

JUDGEMENT

Challenging the judgment and decree dated 28.11.2019 made in MCOP.No.726 of 2016 on the file of the Motor Accident Claims Tribunal, / Chief Judicial Magistrate, Namakkal, the claimant is before this Court.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd respondent. Though the notice has been served on the first respondent, no one appeared on their behalf. In view of the consent expressed by the learned counsel for the appellant and the learned counsel for the second respondent, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the appellant/claimant that, on 07.01.2016 at about 9.00 p.m, when the petitioner was travelling as a pillion rider in the two wheeler bearing Regn.No.TN 28 AL 8415 driven by the first respondent, applied sudden brake in a rash and negligent manner, due to which the vehicle got capsized, which caused the accident. Thereby, the appellant sustained grievous injuries all over his body and got admitted in the Hospital.



C.M.A.No.3393 of 2024

Thereafter, the appellant filed a claim petition seeking compensation of Rs.25,00,000/-.

4. Before the tribunal, the claimant examined P.W.1 to P.W.3 and marked exhibits P.1 to P.15 and on the side of respondents no documents were marked and no witness was examined. After trial, the Tribunal, on appreciation of oral and documentary evidence, awarded a compensation of Rs.2,68,685/- after deducting 15% contributory negligence on the part of the appellant for not wearing the helmet at the time of accident. Being not satisfied with the quantum of compensation awarded by the Tribunal and the negligence fixed on the part of the appellant, he has come up with this appeal seeking enhancement of compensation.

5. Learned counsel appearing for the appellant submitted that though the accident is of the year 2016, the tribunal had taken only a sum of Rs.3,000/- per percentage of disability instead of Rs.5,000/- and the compensation awarded under the other heads are also on lower side and the same has to



C.M.A.No.3393 of 2024

necessarily be enhanced. He further submits that though the appellant is the pillion rider of the aforesaid vehicle, the Tribunal has fixed 15% contributory negligence on the part of the appellant, which is highly excessive. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, admittedly, both the rider and the pillion rider of the vehicle has to necessarily wear helmet as per the provisions of the Motor Vehicle Rules and by considering all the relevant documents, the Tribunal has rightly awarded the compensation after deducting 15% contributory negligence on the part of the appellant / pillion rider, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties.



C.M.A.No.3393 of 2024

Therefore, this Court is not entering into the said aspect. The major grievance of the Appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. Undoubtedly, the appellant has no grievance with regard to the fixation of contributory negligence for not wearing helmet. However, it is the claim of the appellant that though the appellant is the pillion rider of the aforesaid vehicle, fixation of 15% negligence on the part of the appellant for not wearing helmet is on the higher side. When that be so, though as per the provisions of the Motor Vehicle Rules, it is mandatory for both the appellant and the pillion rider to wear helmet while riding the motor cycle and for not complying the same, the Tribunal has fixed 15% contributory negligence on the part of the pillion rider, which is highly excessive. Therefore, this Court decides to fix 5% of the total compensation which will be deductible from the total compensation awarded to the claimant due to non wearing the helmet.

9. It is also the contention of the appellant that though the accident is of the year 2016, however, the Tribunal had taken had erroneously taken a sum of



C.M.A.No.3393 of 2024

Rs.3,000/- per percentage of disability. In this regard, this Court perused Ex.P.15, which is the disability certificate issued by the Doctor and the same reveals that the appellant suffered disability of 22.5% and by erroneously adopting a sum of Rs.3,000/- per percentage of disability, the tribunal awarded a sum of Rs.60,000/-. However, as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.5,000/- per percentage of disability. Moreso, the Doctor assessed the disability of the appellant as 22.5%, however, the percentage of disability varies from Doctor to Doctor. Hence, this Court is inclined to fix the disability of the appellant at 20%. Therefore, the amount under the head Disability stands enhanced to a sum of Rs.1,00,000/- ($20\% \times \text{Rs.5,000/-} = \text{Rs.1,00,000/-}$).

10. Insofar as the compensation awarded under other heads are concerned, the tribunal awarded a compensation of Rs.7,500/- each under the heads transportation and Extra nourishment respectively, which are on lower side and thereby, this Court is inclined to enhance the same to Rs.10,000/- and Rs.25,000/- respectively. Further, a sum of Rs.50,000/- has been awarded



C.M.A.No.3393 of 2024

under the head partial loss of earning which is not sustainable and the same is reduced to a sum of Rs.10,000/-. Insofar as the other heads are concerned, the same does not require any interference. No amount has been awarded under the head “attender charges”, hence, a sum of Rs.10,000/- is awarded under the said head.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	60,000/-	1,00,000/-
Pain and sufferings	50,000/-	50,000/-
Medical bills	1,41,100/-	1,41,100/-
Loss of earnings	50,000/-	10,000/-
Transportation expenses	7,500/-	10,000/-
Extra nourishment	7,500/-	25,000/-
Attender charges	-	10,000/-
Total	3,16,100/-	3,46,100/-
After deducting Contributory Negligence	2,68,685/-	3,28,795/-

12. Accordingly, the appeal is partly allowed and the impugned award



C.M.A.No.3393 of 2024

of the Tribunal is modified enhancing the compensation amount to **Rs.3,28,795/-** after deducting 5% contributory negligence on the part of the appellant for not wearing helmet. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.726 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the Appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. It is underscored that the appellant is not entitled to any interest for the default period, if any. There shall be no order as to costs in the present appeal.

21.12.2024

rap
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No



C.M.A.No.3393 of 2024

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To

1. The Motor Accident Claims Tribunal /
Chief Judicial Magistrate, Namakkal.
2. The Section Officer,
V.R. Section, High Court, Madras.



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C.M.A.No.3393 of 2024

M.DHANDAPANI, J.

RAP

C.M.A.No.3393 of 2024

21.12.2024