



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1125 of 2024

Yuvaraj

..Appellant

.VS.

1.Tufail Ahmed

2.Divisional Manager,
Oriental Insurance Company Ltd.,
Door No.90A, KVA Complex,
Thuraiyur Road,
Namakkal District.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in MCOP No.268 of 2019, dated 08.09.2022, on the file of the MACT/Sub Judge at Paramathi.

For Appellant : Mr.C.Thangaraju

For Respondents : Mr.S.Senthil Kumar for R2

JUDGMENT

The claimant not being satisfied with the quantum of compensation fixed by the Tribunal and also having attributed 25% contributory negligence against the claimant, has filed the present appeal against the Award passed by the Motor Accident Claims Tribunal, Paramathi in MCOP No.268 of 2019 dated 08.09.2022.



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2.The case of the claimant is that on 08.03.2015, he was riding his two wheeler from Vellore to Jederpalayam and at about 11.30 a..m. when the vehicle approached the road near Pothanur flag post, the offending vehicle belonging to the 1st respondent was driven in a rash and negligent manner and had hit the two wheeler. As a result of which, the claimant was thrown out of the vehicle and he sustained malunited fracture shaft of femur left side, Head injury - Temporo parietal extra dural hematoma kept frintal and temporal haemorrhage contusion and post illiac bilateral subcaptial neck of femur fracture. The claimant underwent surgery and plates were fixed and he took treatment as an inpatient for nearly 29 days. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

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 the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle owned by the 1st respondent. After having rendered such a finding, the Tribunal fixed the total compensation at Rs.52,94,313/- under various heads in the following manner:



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S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	40,27,968
2.	Pain and sufferings	1,00,000
3.	For Extra Nourishment	25,000
4.	Loss of Amenities	20,000
5.	Attender Charges	25,000
6.	Damage of clothes	10,000
7.	Medical Expenses	10,61,345
8.	Transportation Charges	25,000
	Total	52,94,313

4.The Tribunal found that the claimant was not wearing a helmet and therefore, attributed 25% contributory negligence on the claimant and thereby, the Tribunal fixed the liability at Rs.39,70,735/- and this amount was directed to be paid by the Insurance Company with interest at the rate of 7.5% per annum. Aggrieved by the same, the present appeal has been filed before this Court.

5.Heard Mr.C.Thangaraju, learned counsel appearing on behalf of the appellant, Mr.S.Senthil Kumar, learned counsel appearing on behalf of the 2nd respondent.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.



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7. The main ground that was urged by the learned counsel for the appellant is with regard to the 25% contributory negligence that was attributed by the Tribunal. In the instant case, the Tribunal on considering the evidence of PW3 came to a categorical conclusion that there was no negligence on the part of the claimant and that the entire accident had taken place only due to the rash and negligent driving of the offending vehicle. The injuries that were suffered by the claimant has also been taken note *supra*. The claimant had also deposed before the Tribunal that he was wearing a headgear at the time of the accident. But however, the Tribunal disbelieved the same on the ground that no such stand was taken in the claim petition.

8. In the considered view of this Court, the Tribunal after having rendered specific finding that the entire negligence was on the part of the offending vehicle, ought to have come up with a specific finding as to how the non-wearing of the headgear by the claimant had actually contributed to the accident. Just because, the claimant had sustained head injury, that cannot be a ground to automatically attribute contributory negligence against the claimant. In this case, the claimant had not only suffered head injury. He had also suffered other grievous injuries all over the body. Therefore, this Court holds that the finding of the Tribunal attributing 25% contributory negligence against the claimant is liable to be interfered by this Court and accordingly, the same is hereby set aside.



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9. Insofar as the quantum of compensation fixed under various heads, this Court finds that the same is reasonable and it does not require the interference of this Court.

10. In the light of the above discussion, the Insurance Company is liable to pay the entire compensation of Rs.52,94,313/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgement. The appellant/claimant will not be entitled for interest for the period of delay period of 306 days as was ordered by this Court in C.M.P.No.25177 of 2023, dated 17.04.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, this Civil Miscellaneous Appeal stands allowed. No costs.

06.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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N. ANAND VENKATESH., J

SSR

To

The MACT/Sub Judge, Paramathi

CMA No.1125 of 2024

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