



C.M.A.No.553 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.553 of 2024

Dinesh Kumar

...Appellant

Vs

1.G.Yasotha
2.National Insurance Co. Ltd.,
Divisional Office – I,
Salem – 7,
Salem District.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the 20% of contributory negligence fixed against the appellant and enhance the award passed by the Motor Accident Claims Tribunal, Erode District at Bhavani, Subordinate Judge at Bhavani against the Judgment and decree dated 22.10.2021 made in MACTOP.No.16 of 2015 from Rs.8,07,756/- to Rs.13,07,756/- (as restricted by appellant) as against the claim of Rs.25,00,000/- with interest and costs.



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For Appellant : Mr.K.V.Muthu Visakan

For Respondent : Mr.S.Vadivel for R2

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 22.10.2021 made in MACTOP.No.16 of 2015.

2. The learned counsel for the claimant would submit that on 05.01.2014, while the claimant was riding a two-wheeler bearing Registration No.TN-37-2692 at Kovai-Salem Highway, a car bearing Registration No.TN-33-AR-8889 came in a rash and negligent manner and dashed against the claimant, due to which the claimant had sustained grievous injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Permanent Disability	3,45,600
2	Pain and Sufferings	25,000
3	Transportation	10,000
4	Extra Nourishment	10,000
5	Loss of Income	16,000



<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
6	Attender's Charges	10,000
7	Medical Bills	5,93,095
	Total	10,09,695
	Deduction towards 20% contributory negligence	2,01,939
	Amount Payable	8,07,756

3. Aspect of negligence:

3.1 The learned counsel for the claimant would submit that in the present case, 20% contributory negligence has been fastened by the Tribunal against the rider of the two-wheeler since at the time of accident, he rode the two-wheeler with two pillion riders. However, the Tribunal had categorically come to the conclusion that the cause of accident was the rash and negligent driving of the driver of the Car bearing Registration No.TN-33-AR-8889. When such being the case, it is not fair on the part of the Tribunal to fix the contributory negligence of 20% against the rider of the two-wheeler.

3.2 Further, he would contend that riding the two-wheeler with two pillion riders is a Statutory violation, for which only fine can be imposed. That apart, as per the findings of the Tribunal, the accident was occurred only due to



the rash and negligent driving of the car driver. Therefore, since the Tribunal cannot find any fault on the part of the rider of the two-wheeler for the cause of accident, he requests this Court to set aside the 20% contributory negligence fastened by the Tribunal against the rider of the two-wheeler.

3.3 In reply, the learned counsel appearing for the respondent would submit that since three persons were traveled in a two-wheeler against the provision of law, the Tribunal had rightly fixed the contributory negligence as 20% against the rider of the two-wheeler and hence, he requests this Court to confirm the same.

3.4 In the present case, there is no dispute with regard to the occurrence of accident. Based on the Ex.P1/FIR, Ex.P2/Mahazar, Ex.P3/Accident Report, Ex.P5/Final Report and the deposition of PW1/claimant, PW2 and PW3/Doctors, the Tribunal had arrived at the conclusion that the accident was occurred only due to the rash and negligent driving of the car driver. Further, in the findings of the Tribunal, it was recorded that though the car driver was examined in order to prove the averments, no evidence has been produced by



the respondent to disprove the Exs.P1, P2, P3 and P5. That apart, the respondent had not culled out anything against the claimant and in favour of the car driver from the deposition of PW1. Under these circumstances, merely for the purpose of riding the two-wheeler with two pillion riders, the Tribunal is not supposed to have fastened the contributory negligence of 20% against the claimant since, the accident was occurred only due to the rash and negligent driving of the car driver.

3.5 Further, for the Statutory violation of riding the two-wheeler with two pillion riders, it is for the RTO/concerned Authorities to impose fine against the rider. In such view of the matter, since the said Statutory violation does not contribute in any way as cause for the accident, thus, fixing 20% contributory negligence is not correct. Therefore, this Court is inclined to set aside the 20% contributory negligence fastened by the Tribunal against the claimant. Accordingly, the same is set aside and the entire negligence is fastened against the car driver and thereby, the insurance company is liable to pay entire award amount.



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4. Aspect of Quantum of compensation:

4.1 The learned counsel appearing for the claimant would submit that the main challenge involved in this appeal is with regard to the fixation of notional income by the Tribunal while awarding compensation. He would submit that in the claim statement, it has been stated that at the time of accident, the claimant was studying 2nd year of B.A. (English Literature) and was earning around a sum of Rs.4,000/- per month by taking tuition. In such case, if the claimant was able to earn around a sum of Rs.4,000/- per month by taking tuition in part-time, he will earn atleast a sum of Rs.6,000/- by working in full-time. Hence, he would fairly request this Court to fix a sum of Rs.6,000/- as notional income of the claimant and award compensation by taking the entire percentage of disability as functional disability and by adding 40% as future prospects.

4.2 In reply, the learned counsel appearing for the respondent would submit that as stated in the claim petition, the claimant was earning a sum of



Rs.4,000/- per month and hence, he requests this Court to fix the said amount of Rs.4,000/- as notional income of the claimant. Further, he would request this Court to confirm the disability taken by the Tribunal since the disability was only assessed by Doctor and not by Medical Board.

4.3 As far as the quantum is concerned, in the present case, the Tribunal had taken the notional income of the claimant as a sum of Rs.4,000/- and applied multiplier method. However, no future prospects was added. Further, it appears that at the time of accident, the claimant was studying 2nd year of B.A. (Literature) and the amount stated in the claim statement (Rs.4,000/- per month) was earned by the claimant by taking tuition in part-time. In such case, by working full-time, the claimant would have certainly earned any reasonable amount, which is not less than a sum of Rs.6,000/- and hence, the Tribunal is supposed to have fixed at least a sum of Rs.6,000/- as notional income of the claimant.

4.4 Normally, for the accident occurred in the year 2015, this Court will fix a sum of Rs.9,000/- as notional income of the claimant, however, in the



present case, the claimant requested this Court to fix only a sum of Rs.6,000/- as notional income of the claimant and hence, considering the year of accident and age of the claimant, this Court is inclined to fix a sum of Rs.6,000/- as notional income of the claimant.

4.5 Further, it appears that no future prospects was added by the Tribunal. As per the law laid down by the Hon'ble Apex Court in ***National Ins. Co. v. Pranay Sethi & others*** reported in **2017 (2) TNMAC 609 (SC)**, the claimant is certainly entitled for 40% future prospects. That apart, considering the age of the claimant, this Court is inclined to apply '18' as multiplier to determine the loss of income due to disability.

4.6 As far as disability is concerned, the learned counsel for the respondent had raised a dispute with regard to the fixation of disability. No doubt that the disability was assessed by the Doctor, who treated the claimant and not by Medical Board. This Court had perused the disability certificate, wherein it has been clearly stated as to how the claimant had suffered due to his injuries and what are the consequences of those injuries and based on the



same, the Tribunal had fixed the disability of the claimant while awarding compensation. At this juncture, this Court feels that it would be apposite to extract the disability certificate issued by the Doctor, who treated the claimant, and the same reads as follows:

Date: 03/02/2021

DISABILITY CERTIFICATE

This is to certify that Mr. Dinesh kumar (Age 25 years) S/o Mr.Angamuthu, 52, Sathy Main Road, Krishnapuram, Salangapalayam, Bhavani, Erode was admitted in our hospital on 06/01/2014 and was treated as inpatient for injuries sustained in a Road Traffic Accident. He had Fracture of bilateral parietal and temporal bones with left parietotemporal subdural haematoma with burst left temporal lobe, fracture of right maxilla, fracture of right zygomatic arch and fracture of right scapula. Left frontoparietotemporal craniectomy, subdural haematoma evacuation, Contusionectomy and decompression was done on 14/01/2014. He was discharged on 27/01/2014. He was again readmitted on 22/07/2014. He had left frontoparietotemporal craniectomy bone deficit. Left frontoparietotemporal titanium mesh cranioplasty was done on 25/07/2014 He was discharged on 01/08/2014.



I have examined him on 04/01/2021 and 03/02/2021. As per the information given by the patient, he has partial memory loss. On examination patient is conscious, moves limbs. For memory loss, Neuro Psychological opinion was obtained. As per the Neuro psychological report, he has mild deficits in attention. His performance on test of scanning and perseveration was inadequate. He has problems in logical memory and sentence recapitulation tasks. He has problems in comprehending relatively complex tasks. Memory for forms was inadequate. Intellectual functioning indicates that patient has borderline level of intellectual functioning (IQ of 72). Neuropsychological testing indicates he has moderate level of temporal and mild fronto-parietal lobe impairment. On IDEAS, his score is 8, which indicates moderate disability (40 - 70%). CT Scan Brain taken on 03/02/2021 reveals Left parieto-temporal craniotomy defect with titanium mesh cranioplasty with left temporal cerebral encephalomalacic and gliotic changes.

He has disability as follows:-

1. Memory loss and intellectual impairment - 40%

I am of the opinion that he has 40% (Forty percent) permanent disability as per the guidelines for evaluation and assessment of mental illness by the Government of India).

(This certificate is issued after examining the patient,



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perusal of his medical records and as per the guidelines for evaluation and assessment of mental illness by Government of India).

IDENTIFICATION MARKS :-

- 1. A scar over the base of left index finger dorsal aspect.*
- 2. Two scars over right elbow posterior aspect.*

DOCUMENTS PERUSED

- 1. Case sheet and discharge summary (Date of admission: 06/01/2014, date of discharge: 27/01/2014)*
- 2. Case sheet and discharge summary (Date of admission : 22/07/2014, date of discharge: 01/08/2014)*
- 3. Neuro psychological Report dated 03/02/2021*
- 4. C.T.Scan brain taken on 03/02/2021*
- 5. Out patient records.”*

4.7 In the above disability certificate issued by the Doctors, it has been clearly narated in a typed format as to how the claimant had suffered injuries and what are the consequences of those injuries and how those disabilities are permanent in nature. During the previous occassions, this Court had seen many disability certificates issued by Medical Board and other Doctors, who



examined the injured claimants and in those certificates, there will be merely two or three lines about the injuries and percentage of disability, which will cause inconvenience for this Court to ascertain the functional disability. The above extracted disability certificate has been issued by the K.G.Hospital, Coimbatore, with full narration about the disabilities sustained by the injured along with the detailed opinion of the Doctor, who treated the injured. Hence, this Court suggests the Doctors and Medical Board to take the above extracted certificate as a model while issuing the disability certificate, so as to enable any Court to determine the functional disability for awarding compensation. Therefore, all the Hospitals, including Government Hospitals, Medical Boards or Doctors, whoever issues the disability certificate shall take all endeavour to issue the disability certificates with as many as particulars as stated in the above extracted disability certificate without fail.

4.8 Further, upon perusing the above certificate, it is clear that the injuries sustained by the claimant is severe in nature. Thus, this Court is inclined to take 40% as functional disability. Accordingly, the loss of income would be calculated as follows:



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Rs.6,000/- (notional income) + Rs.2,400/- (40% future prospects)
* 12 (months) * 18 (multiplier) * 40/100 (functional disability) = Rs.7,25,760/-

4.9 Further, it appears that no amount was awarded towards the Future Medical Expenses and hence, this Court awards a sum of Rs.25,000/- towards the same. With regard to all the other aspects, the compensation awarded by the Tribunal appears to be just and fair and hence, the same stands confirmed.

5. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Permanent Disability	3,45,600	7,25,760
2	Pain and Sufferings	25,000	25,000
3	Transportation	10,000	10,000
4	Extra Nourishment	10,000	10,000
5	Loss of Income	16,000	16,000
6	Attender's Charges	10,000	10,000
7	Medical Bills	5,93,095	5,93,095



<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
8	Future Medical Expenses	Nil	25,000
	Total	10,09,695	14,14,855
	Deduction towards 20% contributory negligence	2,01,939	Set aside by this Court
	Amount Payable	8,07,756	14,14,855

6. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.14,14,855/-. Accordingly, the award amount stands increased from a sum of Rs.8,07,756/- to Rs.14,14,855/-. Since the entire negligence has been fastened against the car driver, the insurance company is directed to deposit the entire award amount. In all other aspects, the award of the Tribunal stands confirmed.

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.14,14,855/- 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, to the credit of MACTOP.No.16 of 2015 on the file of the Motor Accident Claims Tribunal, Erode District at Bhavani, Subordinate Judge at Bhavani. Further, as per the order dated 19.02.2024, the 2nd respondent shall not pay any interest for the



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delayed period of 511 days in filing the present appeal. Upon such deposit, the Tribunal is directed to transfer the award amount to bank account of the claimant, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimant. No costs.

8. Further, the Registry is directed to issue a copy of this judgment to the Director of Department of Health and Family Welfare, so as to convey the view of this Court, with regard to the issuance of disability certificates, to the Medical Council of Tamil Nadu and all the Government and Private Hospitals of Tamil Nadu.

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
nsa

Copy to:

The Director,
Department of Health and Family Welfare.



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KRISHNAN RAMASAMY,J.

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