



C.M.A.No.2977 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

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S.Naveen Kumar

... Appellant/Petitioner

Vs.

1. R.Srinivasuki
2. United India Insurance Co.Ltd.,
Motor third party claims hub,
Silingi Building, 4th Floor,
No.132, Greams Road,
Chennai 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the order made in M.C.O.P.No.1853 of 2020, dated 20.09.2023, on the file of the Motor Accident Claims Tribunal (in the V Court of Small Causes, Chennai).

For Appellant	: Mr.K.Balaji
For R1	: Notice not ready
For R2	: Ms.V.Pushpa

JUDGEMENT



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This Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the quantum of the compensation as well as the contributory negligence passed by the Motor Accidents Claims Tribunal, on the file of M.C.O.P.No.1853 of 2020 dated 20.09.2023.

2. On 20.05.2020 at about 20.30 hours, when the appellant/claimant was riding a two wheeler bearing Reg.No.TN-19-AC-5920, Puzhal to Tambaram bye-pass road, at that time a lorry, bearing Reg.No.TN-07-A-8577, which was parked by its driver in a non-parking area, without any indicator. Consequently, the appellant\petitioner hit the back side of lorry and sustained multiple injuries all over his body. Thereafter, the claimant made a claim petition before the Tribunal, claiming a compensation of Rs.22,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.3,64,000/- and fastened the liability of Rs.1,09,200/- towards compensation for the appellant. Aggrieved by the same, the appellant has filed the present appeal.

4. The learned counsel for the appellant submitted that, the accident was occurred only due to the reason that the lorry bearing Reg.No.TN-07-A-8577



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was parked on the left side of Puzhal to Tambaram bye-road without any signal.

Further, he submitted that the occurrence place of the bye-pass road consists of four lanes, of which, two lanes meant for the purpose of ongoing vehicles and two lanes meant for upcoming vehicles. Under these circumstances, the appellant/claimant was not able to conclude whether the vehicle viz., lorry was moving or not and accidentally, hit the back-side of the lorry, since the lorry was parked on the edge of the road. Therefore, the learned counsel contended that the findings rendered by the Tribunal fixing 35% contributory negligence on the part of the rider of the two wheeler, is liable to be set-aside.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company would submit that, on consideration of oral and documentary evidence, the Tribunal has taken all the aspects and fixed 30% contributory negligence on the part of the rider of the two wheeler stating that rider of the two wheeler has failed to take any steps to avoid the accident, though the lorry was parked in a non-parking area, since he drove the vehicle in a rash and negligent manner. Hence, the Tribunal has rightly fixed 30% liability against the rider of the two wheeler, which requires no interference.

6. Heard the learned counsel for the appellant and the learned counsel



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appearing on behalf of the second respondent and perused the materials available on record.

7. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. As far as the contention of the learned counsel appearing for the appellant in regard to the liability aspect is concerned, the fact that the vehicle viz. Lorry bearing Reg.No.TN-07-A-8577 was parked at a non-parking area without any indicators which is also admitted by the second respondent/Insurance Company. Further, the road where accident had taken place, speed limit is marked at 80kms per hour for all the vehicles. In such circumstances, while riding a two wheeler at a speed of 60-80 kms at night hours, it is not possible for the rider of a two wheeler as to know whether the lorry was plying or parking on the side of the road, which is a non-parking place. In the present case, admittedly, the lorry was parked at a non-parking place on the road where speed limit is fixed at 80 kms per hour and the rider, who is the appellant herein, could not find out whether the lorry was moving or parked and when he reached closure to the lorry, he was unable to control the vehicle and constrained to hit the lorry, resulting in sustaining injuries. Therefore, as rightly pointed out by the learned counsel for appellant, fastening 30% contributory negligence on the appellant/rider of the two-wheeler,



in the opinion of this Court, is not appropriate and the entire negligence is solely on the part of the driver of the lorry since it was parked at non-parking area on the left-side of the road. If the lorry was not parked, the accident could not have taken place. Even, if the rider had attempted to avert the accident, certainly he could not have controlled the vehicle. However, the claimant on nearing to the parked vehicle, attempted to avert the accident and applied sudden brakes and fell down as he could not control the two wheeler and saved his life, but he sustained the injuries. Therefore, when the evidence on record is against the driver of the lorry which establishes the negligence on his part who drove the lorry bearing Reg. No.TN-07-A-8577, which was insured with the 2nd respondent Insurance Company. Therefore, fastening 30% of contributory negligence on the part of the rider of the two-wheeler by the Tribunal is liable to be set-aside, and accordingly, the same is set-aside and the entire liability is now fastened on the 2nd respondent Insurance company.

7.1. As far as the quantum of compensation is concerned, the learned counsel for the appellant submitted that, the claimant was aged about 21 years, and due to the accident, the claimant had suffered fracture on his face and on his left hand. The Medical Board examined the claimant and fixed disability at 30% and awarded Rs.5,000/- per percentage and arrived at Rs.1,50,000/-



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towards disability, which appears to be low. Hence, this Court is inclined to award a sum of Rs.6,000/- per percentage, and the amount due to disability is modified and enhanced to a sum of Rs.1,80,000/-. Further, he contended that at the time of accident, the claimant was working as a Customer Service Officer and earning a sum of Rs.13,750/- per month. However, without considering the same, the Tribunal had erroneously fixed the notional monthly income of the appellant at Rs.10,000/- per month, and awarded Rs.20,000/- towards treatment period of two-months, which is very meager.

8. In view of the above, this Court is inclined to fix a notional income of the injured at Rs.15,000/- per month and loss of income would be Rs.30,000/- for a period of two months. Since no amount has been awarded by the Tribunal under the head “future medical expenses”, this Court is inclined to award a sum of Rs.25,000/- under the said head.

9. Insofar as the compensation awarded by the Tribunal under other heads is concerned, this Court finds the same is just and proper and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as under :-



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Total loss of earning due to disability	1,50,000/-	1,80,000/- (enhanced)
Medical expenses	94,500/-	94,500/-
Future medical expenses	Nil	25,000/- (awarded)
Loss of income	20,000/-	30,000/- (enhanced)
Pain and sufferings	30,000/-	30,000/-
Mental agony	20,000/-	20,000/-
Loss of amenities	20,000/-	20,000/-
Attender charges	3,500/-	3,500/-
Transportation charges	5,000/-	5,000/-
Extra nourishments	20,000/-	20,000/-
Damages to clothes	1,000/-	1,000/-
Total	3,64,000/-	
Less 30% contributory negligence committed by the injured	1,09,200/-	Nil
Total	2,54,800/-	4,29,000/-

10. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.2,54,800/-** to **Rs.4,29,000/-**. The second respondent/Insurance Company is directed to deposit the said amount along with interest and cost, 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 M.C.O.P.No.1853 of 2020 on the file of V



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Court of Small Causes, Chennai. Upon such deposit being made, the Tribunal is

directed to transfer the entire amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs.

20.02.2024

Index : Yes / No

NCC : Yes / No

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To

1. The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

Krishnan Ramasamy,J.,



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