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C.M.A.No.3011 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.3011 of 2023

N.Mubarak Ali

... Appellant/Petitioner

Vs.

1. L.Muthuraj
2. The Manager,
United India Insurance Co.Ltd.,
Sillingi Building, 4th Floor,
No.134, 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.688 of 2019, dated 31.07.2023, on the file of the Motor Accident Claims Tribunal (in the II Court of Small Causes, Chennai).

For Appellant : Mr.K.Balaji

For R1 : N/D/W vide order dated
19.12.2023

For R2 : Dr.C.Paranthaman



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JUDGEMENT

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This Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the quantum of the award as well as the fastening the liability passed by the Motor Accidents Claims Tribunal, on the file of M.C.O.P.No.688 of 2019 dated 31.07.2023.

2. On 25.02.2018 at about 15.00 hours, when the appellant/claimant was riding a two wheeler bearing Reg.No.TN-12-U-8165, he was hit by a lorry, bearing Reg.No.TN-22-BB-9555, which was driven by its driver in a rash and negligent manner. Due to said accident, the claimant sustained multiple injures all over his body. Thereafter, the claimant made a claim petition before the Tribunal, claiming a compensation of Rs.80,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.27,99,200/- and fastened the liability of Rs.2,79,920 on the appellant. Aggrieved by the same, the appellant has filed the present appeal.

4. The learned counsel for the appellant submitted that, at the time of accident, the injured was working as a two-wheeler mechanic and earning a



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sum of Rs.15,000/- per month. However, the Tribunal fixed the monthly income notionally at a sum of Rs.10,000/- per month, which is on the lower side, and the same needs to be enhanced at Rs.14,000/- per month. Further, he would submit that though the Tribunal, based on oral and documentary evidence, has arrived at a categorical finding that the driver of the lorry bearing Reg.No.TN-22-BB-9555 was the sole cause for the accident, however, fastened 10% liability on the rider of the two-wheeler viz., appellant bearing Reg.No.TN-12-U-8165, for the reason that the appellant/claimant failed to produce the driving licence as proof to show that he was in possession of same at the time of the accident. Therefore, the learned counsel contended that the findings rendered by the Tribunal fixing 10% contributory negligence on the part of the rider of the two wheeler, are liable to be set-aside.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company would submit that the rider of the two wheeler has not produced the driving licence and taking note of the same, the Tribunal has rightly fixed 10% liability against the rider of the two wheeler, which requires no interference. Further, the learned counsel submitted that this Court may re-determine the notional monthly income of the appellant/claimant by fixing at Rs.12,000/-, which may be fair and reasonable.



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6. Heard the learned counsel for the appellant and the learned counsel 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. In the present case, based on the oral and documentary evidence, the cause for the accident is only due to the rash and negligence on the part of the lorry bearing Reg.No.TN-22-BB-9555, the Tribunal has to fasten the entire liability on the part of the lorry, which was insured with the second respondent/Insurance Company. However, while fixing the contributory negligence, the Tribunal has committed serious error and fastened 10% contributory negligence against the claimant, and hence the same is set-aside. Further, the Medical Board fixed the disability of claimant at 80%, and due to the accident the appellant/claimant right-hand was amputated and disability is severe in nature and the marital prospects are also diminished. Therefore, the learned counsel for the appellant contended that due to loss of right-hand, the appellant is not able to work well as before. Hence, the learned counsel requested to take the disability of the claimant at 100%. Considering the nature of injuries sustained by the claimant, the



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appellant/claimant can do little works, and therefore, 100% disability cannot be fixed. Under these circumstances, the Tribunal, has rightly fixed the disability of the claimant at 80%, which is just and reasonable, and the same is confirmed.

8. As far as the loss of income is concerned, this Court feels it appropriate to fix notional monthly income at Rs.12,000/- per month and adding future prospects at 40% as per the dictum laid-down by the Hon'ble Apex Court, the total income is quantified at Rs.16,800/- per month. The injured was aged about 19 years at the time of accident as evidenced from the records, adopting the multiplier of 18 as per the decision of Apex Court, the loss of earning due to disability is arrived at Rs.16,800/- $\times 12 \times 18 \times (80/100) = \text{Rs.}29,03,040/-$. Consequently, a sum of **Rs.24,19,200/-** awarded by the Tribunal under the head of “loss of earning due to disability” is hereby modified, and enhanced to **Rs.29,03,040/-**. No amount has been awarded under the heads of “future medical expenses” and “marital prospects”, therefore, this Court is inclined to award a sum of Rs.50,000/- towards “future medical expenses”, since the appellant/claimant used to change his artificial hand periodically and sum of Rs.1,00,000/- towards “marital prospects” for loosing his better life partner.



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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 is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as under :-

<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	24,19,200/-	29,03,040/- (enhanced)
Future medical expenses	Nil	50,000/- (awarded)
Marital prospects	Nil	1,00,000/- (awarded)
Loss of earning during treatment	30,000/-	30,000/-
Pain and sufferings	1,00,000/-	1,00,000/-
Loss of amenities	1,00,000/-	1,00,000/-
Attender charges	50,000/-	50,000/-
Transportation charges	50,000/-	50,000/-
Extra nourishments	50,000/-	50,000/-
Total	27,99,200/-	
Less 10% contributory negligence committed by the injured	2,79,920/-	-
Total	25,19,280/-	34,33,040/-
Rounded off		34,33,000/-



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10. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.25,19,280/-** to **Rs.34,33,000/-**. 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.688 of 2019 on the file of II 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.

01.02.2024

Index : Yes / No
NCC : Yes / No
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Krishnan Ramasamy,J.,
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To

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

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