



C.M.A.(MD) No.73 of 2023

WEB CODE: **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 25.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.73 of 2023

S.Manoj Prabhu
Appellant

...

vs.

1.R.M.Tamilzharasan,
2.M.Xavier Joseph,
3.The Divisional Manager,
The United India Insurance Company Ltd.,
KAR Towers, R.S.Road,
Dindigul – 1.
Respondents

...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the fair order and ex-decree dated 10.03.2022 in M.C.O.P.No.246 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dindigul.

For appellant	: Mr.S.Pugalendhi
For Respondents	
for R1	: Mr.J.Cibi Chakraborty
for R2	: No appearance
for R3	: Mr.I.Suthakaran

J U D G M E N T



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The appeal has been filed challenging the finding on negligence and seeking enhancement of compensation.

2. The appellant filed a claim petition before the Tribunal, stating that while he was riding a two wheeler in Vadamadurai to Dindigul main road, a water tanker lorry, which was proceeding in the same direction ahead of him in a rash and negligent manner, suddenly stopped the vehicle and reversed it, as a result of which he dashed against the lorry and sustained grievous injuries.

3. The present owner of the vehicle and the erstwhile owner of the offending vehicle who were arraigned, as respondents 1 and 2 before the Tribunal, remained *ex parte* before the Tribunal.

4. The third respondent herein filed a counter, stating that the accident took place only due to the negligence of the appellant; and that the appellant was riding the two wheeler without keeping a safe distance and dashed against the lorry and therefore, they are not liable to pay the compensation.

5. Before the Tribunal, the appellant examined P.W.1 and P.W.2



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and marked Exs.P1 to P9. The respondents neither examined any witnesses nor marked any documents. The disability certificate was marked as Ex.C1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the rider of the two wheeler and the driver of the tanker lorry insured with the third respondent are equally responsible for the accident and fixed the contributory negligence at 50% each on both of them and directed the third respondent to pay the compensation at Rs.1,40,643/- being 50% of Rs.2,81,286/-.

7. The learned counsel for the appellant submitted that the appellant, by examining himself as P.W.1, had proved the manner of the accident; that FIR was registered as against the driver of the lorry; that the respondents had not produced any evidence to dislodge the evidence produced on the side of the claimant; and that the quantum of compensation is meagre and hence prayed for enhancement of the compensation.

8. The learned counsel for the third respondent, however, submitted



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that the Tribunal had passed a well considered award and there is no reason to interfere with the same.

9. The learned counsel for the first respondent/owner of the vehicle adopted the submissions of the learned counsel for the third respondent.

10. The points for consideration in the instant appeal are as follows:

'a. Whether the finding on negligence held by the Tribunal is justified?

b. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?'

11. Admittedly, the respondents had not produced any evidence to prove the manner of the accident. The FIR has been lodged against the driver of the tanker lorry insured with the third respondent. The evidence of P.W.1/appellant is corroborated by the contents of the FIR/Ex.P1. Therefore, the finding of the tribunal fixing contributory negligence at 50% on the appellant is on the higher side. In the absence of any evidence produced on the side of the third respondent to prove the manner of the accident, it cannot be assumed that the claimant contributed equally to the



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accident. At the same time, it can be seen from the evidence of P.W.1 that the accident could have been avoided if the appellant had kept a safe distance from the vehicle proceeding in front of him. This Court is of the view that since the appellant had contributed partially to the accident by not keeping a safe distance, it would be reasonable to fix the contributory negligence at 25% on the appellant. Point No.1 is answered accordingly.

12. As regards the quantum of compensation, it is seen that the appellant had suffered disability of 20%, which is not in dispute. The appellant did not produce any evidence to prove the functional disability. Therefore, the reason given by the Tribunal for adopting the percentage method for awarding compensation cannot be faulted. The learned counsel for the appellant produced the judgement of the Hon'ble Division Bench of this Court in the case of ***Future General India Insurance Company Limited vs. Manivannan and others (C.M.A.No.3334 of 2021, dated 15.06.2022)***, wherein Rs.7,000/- was awarded for a percentage of disability for the accident that took place in the year 2017. Hence, the compensation under the head 'disability' is enhanced to Rs.7,000/- x 20 = Rs.1,40,000/-.



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13. Considering the fact that the claimant suffered a hip fracture, this Court is of the view that the compensation under the heads 'pain and sufferings' and 'loss of amenities' can be enhanced to Rs.50,000/- each. Considering the year of accident, the compensation under the heads 'transport expenses', 'extra nourishment' and 'attendant charges' can be enhanced to Rs.10,000/- each.

14. P.W.2/doctor had deposed that a plate was fixed during the surgery for treatment of the fracture in his hip. This Court, therefore, is of the view that the future medical expenses for removing the plate and also for physiotherapy cannot be ruled out. Hence, a sum of Rs.30,000/- is awarded under the said head. Thus, the compensation awarded by the Tribunal is enhanced as follows:

<i>S.No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	Rs. 20,000/-	Rs. 20,000/-	Confirmed
2	Disability	Rs. 1,00,000/-	Rs. 1,40,000/-	Enhanced
3	Medical expenses	Rs. 1,34,286/-	Rs. 1,34,286/-	Confirmed
4	Transportation charges	Rs. 2,000/-	Rs. 10,000/-	Enhanced
5	Extra nourishment	Rs. 2,000/-	Rs. 10,000/-	Enhanced
6	Damages to clothing and articles	Rs. 1,000/-	Rs. 1,000/-	Confirmed
7	Pain and sufferings	Rs. 10,000/-	Rs. 50,000/-	Enhanced



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<i>S.No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
8	Loss of amenities	Rs. 10,000/-	Rs. 50,000/-	Enhanced
9	Attender charges	Rs. 2,000/-	Rs. 10,000/-	Enhanced
	Total	Rs.2,81,286/-	Rs.4,25,286/-	Enhanced by Rs.1,44,000/-
	25% of contributory negligence		(-) Rs. 1,06,321/-	
	Total		Rs.3,18,965/-	

15. The third respondent/Insurance Company is directed to pay 75% of the compensation, which is equal to **Rs.3,18,965/-** (Rupees Three Lakhs Eighteen Thousand Nine Hundred and Sixty Five only), together with interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

16. On such deposit, the appellant/claimant is permitted to withdraw the award amount with interest and costs, less the amount already withdrawn, if any, by filing an appropriate application before the Tribunal.



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17. In the result, this Civil Miscellaneous Appeal is partly

allowed. No costs.

25.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Motor Accidents Claims Tribunal, Special Sub Court, Dindigul.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN,J

apd



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