



C.M.A(MD)No.1227 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1227 of 2017

Prabhu

... Appellant/Petitioner

Vs.

1.James

2.The General Manager,
Reliance General Insurance Company Ltd.,
Branch Office,
B.L.A.Complex, II Floor,
Thillai Nagar Main Road,
Opp. to Lakshmi Archade,
Trichy.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to modify the award passed in M.C.O.P.No.769 of 2009 on the file of the Motor Accident Claims Tribunal / III Additional Sub-Court, Trichy, dated 07.09.2015 seeking enhancement of compensation of Rs.2,00,000/-.

For Appellant : Mr.N.Sudhagar Nagaraj

For R1 : No Appearance



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For R2 : Mr.V.Sakthivel

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JUDGMENT

The present appeal has been filed by the injured claimant in M.C.O.P.No.769 of 2009 on the file of Motor Accident Claims Tribunal / III Additional Sub-Court, Trichy seeking enhancement of the compensation.

2. According to the injured claimant, he is an agricultural coolie, earning a sum of Rs.5,000/-. He met with an accident on 05.06.2008, in which he had sustained grievous injuries. Hence, he had prayed for a compensation of Rs.10,00,000/-.

3. The insurance company had filed a counter contending that at the time of accident, in the two wheeler, apart from the injured claimant, two other persons had travelled and therefore, they have also contributed to the accident.

4. The tribunal after considering Exhibit P.13 disability certificate has arrived at a finding that the claimant has incurred 44% disability and



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has awarded a sum of Rs.3,000/- per percentage of disability. The tribunal has deducted 10% towards contributory negligence on the ground that the injured claimant was travelling triples in a two wheeler. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant herein, there are no records to establish that the triples driving had contributed to the accident and hence, the tribunal ought not to have deducted 10% towards contributory negligence. He further contended that the monthly income of the injured claimant ought to have been fixed at Rs.5,000/- and hence, he prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent insurance company had contended that the very fact that three persons have travelled in the vehicle would clearly show that they have lost their balance and they have also contributed to the said accident. He further contended that the award amount already passed by the tribunal is on the excessive side and hence, it does not call for any enhancement by the appellate Court.



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7. I have carefully considered the submissions made on either side and perused the material records.

8. The tribunal has fixed a sum of Rs,3,000/- per percentage of disability and has awarded a sum of Rs.1,32,000/- towards partial disablement for an accident that has taken place in the year 2008. Fixing a sum of Rs.3,000/- per percentage of injury is reasonable and there is no scope for enhancement. The award under the other heads are also reasonable and there is no scope for enhancement. As far as the deduction of 10% towards contributory negligence is concerned, the insurance company has not examined the driver of the offending vehicle. That apart, merely because the injured claimant was part of triples riding, the same could not be contended that this has resulted in contributory negligence. The Hon'ble Supreme Court in ***Civil Appeal No.79 of 2020 (Mohammed Siddique & Another Vs. National Insurance Company Limited & Others)*** dated 08.01.2020 has categorically held as follows:

“13.....Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a



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*finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. **There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked.....***

9. In view of the judgment of the Hon'ble Supreme Court, unless it is established that there is a casual connection between the violation and the accident or a casual connection between the violation and impact of the accident upon the victim, the quantum of compensation cannot be reduced on the ground of contributory negligence. Therefore, this Court is of the considered opinion that the tribunal was not right in deducting 10% towards contributory negligence.



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10. In view of the above said deliberations, the appeal is partly allowed and the quantum of compensation is enhanced from Rs. 1,90,800/- (Rupees One Lakh Ninety Thousand and Eight Hundred only) to Rs.2,12,000/- (Rupees Two Lakh and Twelve Thousand only) (without deducting 10% towards contributory negligence). However, the order relating to pay and recovery is hereby confirmed. The balance amount shall be deposited by the insurance company within a period of eight (8) weeks from the date of receipt of copy of this order.

11. In view of the above said observations, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

26.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal /
III Additional Sub-Court, Trichy,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.



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Judgment made in
C.M.A(MD)No.1227 of 2017

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