



C.M.A.(MD).No.409 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.409 of 2017

Dhavaselvam

... Appellant/Claimant

-VS-

1. Sami Automobiles
83, TPK Road,
Madurai

2. New India Assurance Company Limited,
Kamarajar Salai,
Madurai,
Through its Regional Manager.

3. Kannan

4. Oriental Insurance Company Limited,
Bhangur Tharmasalai Building Street,
South Veli Veethi,
Madurai – 1.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, challenging the award dated 03.02.2016, made in M.C.O.P.No. 944 of 2010 on the file of the IV Additional Sub Court, Madurai.



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For Appellant : Mr.T.A.Ebenezer

For R2 : Mr.D.Sivaraman

For R-4 : Mr.C.Karthick

For R1 and R3 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation as against the award passed in M.C.O.P.No.944 of 2010 on the file of the IV Additional Sub Court, Madurai.

2. The injured claimant was the driver of the bus, which was owned by the third respondent and insured with the fourth respondent. According to the claimant, while he was driving the bus, the lorry owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and dashed against the bus, in which, he had sustained grievous injuries. According to him, he has lost his capacity to work further. Hence, he prayed for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation.



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3. The Insurance Company has filed a counter contending that in another batch of claim petitions filed by the passengers of the bus, the negligence has been fixed upon the claimant and driver of the lorry. They have also relied upon Ex.R.2, batch of orders passed in the claim petitions, wherein 50% of liability has been fixed on the claimant. Hence, he prayed for dismissal of the claim petition.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the accident had taken place due to the negligence on the part of the driver of the bus as well as the driver of the lorry and has fixed contributory negligence on the part of the claimant at 50%. The balance 50% of liability has been fixed upon the respondents 1 and 2.

5. As far as the quantum is concerned, as per Ex.P.8 the disability is assessed at 34%. The Tribunal has taken it as 24% disability and for each percentage of disability a sum of Rs.2,000/- has been awarded. Ultimately, a sum of Rs.92,914/- has been awarded and after deducting 50% of the amount towards contributory negligence, the claimant was awarded a sum of Rs.46,457/-. Challenging the said award, the present appeal has been filed by the claimant.



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6. According to the learned counsel appearing for the appellant, the appellant/claimant was acquitted from the criminal case under Ex.P.2 and therefore, 50% of contributory negligence ought not to have been mulcted upon him. He further contended that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry. Hence, he prayed for setting aside the fixing of 50% contributory negligence upon him. He further contended that since the doctor has fixed the permanent disability at 34% the Court ought not to have reduced it to 24%. He further sought for the enhancement of compensation under various other heads.

7. Per contra, the learned counsel appearing for the second respondent/insurer of the lorry had contended that the Tribunal was right in fixing 50% of liability upon the claimant himself. He further contended that there is no scope for any further enhancement of compensation.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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9. There is a head on collision between the lorry and the bus, in which, the claimant, who was the driver of bus sustained some injuries. The passengers of the bus have filed M.C.O.P.Nos.1147 to 1151 of 1997, before the Additional District and Sessions Court, Madurai. In the said proceedings, the Tribunal has arrived at a finding that 50% of liability should be fixed upon the driver of the bus. This judgment has been marked as Ex.R2. Therefore, in the present case, the Tribunal, after independently considering the oral and documentary evidence had arrived at a finding that the negligence on the part of the claimant could be fixed at 50%. This Court does not find any reason to interfere in the fixation of 50% contributory negligence on the part of the claimant, just because, he has been acquitted from the criminal case.

10. The Tribunal ought not to have reduced the disability fixed by the Doctor from 34% to 24%. Therefore, the disability is fixed at 34% and for each percentage of disability a sum of Rs.2,000/- has to be awarded. In other respects the award of the Tribunal is hereby confirmed.



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11. In such circumstances, the award of the Tribunal is reassessed as follows:

Permanent partial disability	:	Rs. 68,000/-
Loss of income	:	Rs. 13,500/-
Pain and suffering	:	Rs. 20,000/-
Transport Charges	:	Rs. 5,000/-
Extra Nourishment	:	Rs. 5,000/-
Loss of estate	:	Rs. 1,000/-
Medical Expenses	:	<u>Rs. 414/-</u>
Total	:	<u>Rs.1,12,914/-</u>

out of the said amount 50% comes to **Rs.56,457/-**

12. In view of the above, the award of the Tribunal is enhanced from Rs.46,457/- (Rupees Forty Six Thousand Four Hundred and Fifty Seven only) to 56,457/- (Rupees Fifty Six Thousand Four Hundred and Fifty Seven only) The said enhanced amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition. The second respondent is directed to deposit the enhanced amount along with accrued interest, within a period of eight weeks from the date of receipt of a copy of this order.



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13. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

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

1. The IV Additional Sub Court,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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