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CMA No.2494 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2494 of 2022

Ramesh

.. Appellant

.Vs.

1.Selvakumar

2.The Branch Manager
United India Insurance Company Limited
Rep.by its Branch Manager
No.50-A, Paalaivasal Street
Perambalur.

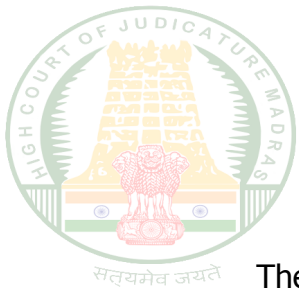
.. Respondents

Policy No.0905023116P100751679

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 23.06.2022 made in M.C.O.P.No.139 of 2017, passed by the Motor Accidents Claims Tribunal/Subordinate Judge's Court, Perambalur.

For Appellant : Ms.Sithi Fathima Samt
for Mr.C.Vidhusan

For Respondents : Mrs.I.Malar [R2]



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JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/Subordinate Judge's Court, Perambalur, in M.C.O.P.No.139 of 2017, dated 23.6.2022, has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that he was riding his two wheeler at Esanai to Anukoor Road from East to West on 13.11.2016 and at about 4.30 pm, the offending vehicle which is the lorry which was going in front of the two wheeler was all of a sudden stopped by applying break and as a result, the two wheeler driven by the claimant hit the rear side of the lorry. As a result of this accident, the claimant sustained multiple injuries. An FIR came to be registered in Crime No.1052 of 2016, against the driver of the 1st respondent lorry. It is under these circumstances, the claimant filed the claim petition seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident took place only due to the rash and negligent driving on the part of the driver of the 1st respondent's offending lorry. After having come to such a conclusion, the Tribunal attributed 50% contributory negligence against the claimant on the ground that he should have maintained safe distance from the lorry and that apart, he also smelt alcohol in his breath when he was treated by the doctor who



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was examined as RW.2.

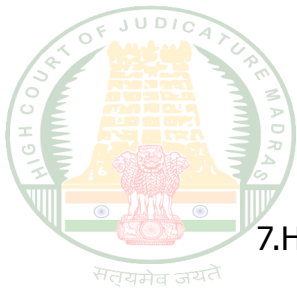
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4.The Tribunal thereafter proceeded to assess the total compensation at Rs.3,07,904/- in the following manner:

| Sl.No. | Compensation awarded under the Head | Amount (in Rs) |
|--------|--|----------------------|
| 1. | Loss of income due to the disability (5,000x30) | Rs.1,50,000/- |
| 2. | Pain and sufferings | Rs. 25,000/- |
| 3. | Transport charges | Rs. 5,000/- |
| 4. | Attendant charges | Rs. 4,500/- |
| 5. | Loss of income during treatment | Rs. 10,000/- |
| 6. | Discomfort, frustration and loss of social enjoyment | Rs. 10,000/- |
| 7. | Medical Bills | Rs.1,23,904/- |
| | Total | Rs.3,07,904/- |
| | After deduction 50% towards contributory negligence on the part of the appellant/claimant | Rs.1,53,952/- |

5.Out of this, 50% was deducted and the balance 50% was directed to be paid by the Insurance Company along with interest at the rate of 7.5% p.a.

6.The claimant aggrieved by the quantum of compensation fixed and also 50% contributory negligence being attributed against the claimant, has filed the present appeal before this Court.



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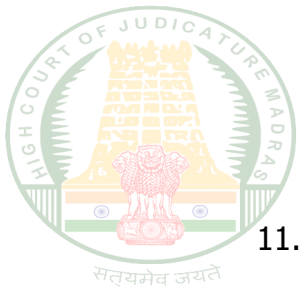
7. Heard Ms.Sithi Fathima Samt, learned counsel for the appellant and

Mrs.I.Malar, learned counsel for the 2nd respondent/Insurance Company.

8.This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court had also carefully gone through the award passed by the Tribunal.

9.In the instant case, the Tribunal on considering the evidence available on record came to a categoric conclusion that the accident took place only due to the rash and negligent driving on the part of the driver of the 1st respondent's offending lorry. While arriving at this conclusion, the Tribunal took into consideration the evidence of PW.1 and also Ex.P.1 which was the FIR registered against the driver of the lorry.

10.The Tribunal took into consideration the evidence of the doctor examined as RW.2 and also the accident register which was marked as Ex.R.1. In the said accident register as well as the evidence of the doctor, it was mentioned that the claimant smelt alcohol in his breath. The Tribunal assumed that due to the influence of alcohol and since the claimant did not keep safe distance from the lorry, the two wheeler had dashed on the rear side of the lorry. Therefore, 50% contributory negligence was attributed against the claimant.



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11. Consuming alcohol per say is not an offense. In fact, the State is the only provider of the alcohol to the citizens through the IMFL shops run by them. In view of the same, it is the sole responsibility of the State to also take care of the consequences arising out of consumption of liquor. What is important is to see if the consumption of alcohol has influenced the driving capacity of the rider of the vehicle. Section 185 of the Motor Vehicles Act, 1988, gives some indication with respect to the level of alcohol in the blood which will be considered to be an offense. It is provided that the alcohol in the blood cannot exceed 30 mg per 100 ml of blood. Only if the level crosses this threshold fixed under the provision, a criminal offense is said to have been committed. Therefore, it can be safely held that the same threshold can be applied even to make a legal presumption that a person will not be within control while riding the vehicle under the influence of alcohol.

12. The doctor, who was examined as RW.2 and also the accident register that was marked as Ex.R.1 no where indicates regarding the level of alcohol in the blood of the claimant. What is mentioned is that the claimant smelt alcohol in his breath. This finding by itself is not sufficient to attribute contributory negligence against the claimant.

13. Insofar as maintaining safe distance from the vehicle going in front, considering the nature of roads that are available in the towns, suburbs and cities, it is too difficult to maintain safe distance. It is important for the Court to take into



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consideration the prevailing reality. In many instances, when the vehicle going in front applies sudden break, it becomes very difficult for the vehicle following it to come to a grinding halt and in most of the cases, the vehicle which follows invariably hits the rear side of the vehicle which abruptly stopped by applying sudden break. Maintaining a safe distance, at the best is possible only in the highways and where the roads are broader and the traffic is relatively lesser. Therefore, even though it is advisable to maintain a safe distance, the fact that the vehicle has been hit on the rear side due to the sudden break applied by the vehicle in front, by itself will not result in attributing contributory negligence.

14. In the light of the above discussion, this Court is inclined to interfere with the finding of the Tribunal with respect to attributing 50% contributory negligence on the claimant.

15. Insofar as the income is concerned, the Tribunal has fixed the proper income at Rs.5,000/- since the accident had taken place in the year 2016. The same is in line with the judgment of the Division Bench in CMA No.3334 of 2021, dated 15.6.2022. Therefore, the same does not require any interference.

16. In this case, the claimant was taking treatment as an inpatient for nearly 9 days from 14.11.2016 to 22.11.2016. In view of the same, this Court is inclined to increase the compensation under the head of attender charges from 4,500 to



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Rs.15,000/- . The Tribunal did not grant any compensation for extra nourishment charges and hence, this Court is inclined to fix a sum of Rs.15,000/- under this head also. The compensation that has been fixed under the other heads will not require the interference of this Court.

17.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

| Sl.No. | Compensation awarded under the Head | Amount (in Rs) |
|--------|--|----------------------|
| 1. | Loss of income due to the disability (Rs.5,000/-x30) | Rs.1,50,000/- |
| 2. | Pain and sufferings | Rs. 25,000/- |
| 3. | Transport charges | Rs. 5,000/- |
| 4. | Attendant charges | Rs. 15,000/- |
| 5. | Loss of income during treatment | Rs. 10,000/- |
| 6. | Discomfort, frustration and loss of social enjoyment | Rs. 10,000/- |
| 7. | Medical Bills | Rs.1,23,904/- |
| 8. | Extra Nourishment | Rs. 15,000/- |
| | Total | Rs.3,53,904/- |

18.The compensation awarded by the tribunal below at **Rs.1,53,952/-** is enhanced to **Rs.3,53,904/-** and the enhanced compensation shall be paid by the 2nd respondent with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of copy of



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this judgment. The other directions issued by the Tribunal below with regard to the mode of payment of compensation remain unaltered.

19.This Civil Miscellaneous Appeal is allowed in the above terms. No costs.

20.Before drawing the curtains, this Court in many cases is able to see that the Doctor, who gives the treatment immediately after the injured is taken to the hospital or when the deceased is brought to the hospital, smells alcohol in their breath. This is also indicated in the accident register prepared by the doctor. However, in none of these cases, the effort is taken to find out the percentage of alcohol in the blood. This determination is very important since this determination will show as to whether the person who had consumed alcohol, was within his limits or exceeded the limits and he was not within his control. Such a scientific data will also enable the Court to come to correct conclusions in cases of this nature. Since this practice is not followed, this court is inclined to issue the following directions:

The Principal Secretary, Ministry of Health and Family Welfare, Government of Tamil Nadu, shall issue a circular to all the hospitals including private hospitals to the effect that in all cases where the injured or the deceased is brought to the hospital and smells alcohol, the level of alcohol in the blood shall be assessed and the same must be noted in the relevant records.This practice shall be made mandatory since there is



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an increase in the number of cases where the rider of the vehicle drives the vehicle after consuming alcohol. Even though, the State Government is taking steps to conduct surprise checks, that by itself will not stop this problem and it has to be made mandatory to assess the level of alcohol in the blood atleast in cases where accidents takes place. This will help the motor accident claims preferred by such persons to be decided in a proper manner while determining the issue of negligence to be attributed in an accident.

A copy of this order shall be marked to the The Principal Secretary, Ministry of Health and Family Welfare, Government of Tamil Nadu.

16.04.2024

Index : Yes
Speaking Order
Neutral citation : Yes
KP

To

1. Subordinate Judge's Court
(Motor Vehicle Accident Claims Tribunal)
Perambalur.
- 2.The Branch Manager
United India Insurance Company Limited
Rep.by its Branch Manager
No.50-A, Paalaivasal Street
Perambalur.
- 3.The Principal Secretary,
Ministry of Health and Family Welfare
Government of Tamil Nadu.



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N. ANAND VENKATESH., J
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