

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1837 of 2014

Kuppusamy

... Appellant

versus

1. T.Kanthappan

2. The New India Assurance Co Ltd,
B.O. (720403) D.No.17, 2nd Floor,
Fort Main Road, Sevapet, Salem-2

... Respondents

Prayer : Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.08.2013 made in M.C.O.P.No.589 of 2010 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Sankarai.

For Appellant : Mr. C.Kulanthaivel
For Respondents : No Appearance, for R-1,
Ms. R.Sreevidhya, for R-2

JUDGMENT

The Claimant / injured, aged 56, self employed as agricultural worker and milk vendor, earning a sum of Rs.8,000/- per month, suffered an accident on 31.08.2010.

2. The Three Fractures on Right shoulder in Clavicle Bone, fracture in left leg in upper part with knee joint in fibula bone and fracture in the left side forehead in Maxilla Bone and fracture in Lateral wall of left orbital bones and left Mandible bone, led to 68% disablement (as spoken to by the Doctor) causing functional disablement. So saying, the claimant filed a claim petition, claiming a sum Rs.5,00,000/-, as compensation. The Tribunal quantified the Compensation at Rs.1,23,500/- and deducting 25% towards contributing negligence awarded the compensation at Rs.92,625/-.

3. Assailing the compensation as inadequate, the claimant has filed this appeal.

4. The contention of the learned counsel for appellant / claimant / injured is that, when the driver of the offending

vehicle has accepted his negligence before the Criminal Court and has paid the fine amount, without taking the plea of the contributing negligence, then, there is no justification for the Tribunal to fix 25% of the contributing negligence on the part of the injured.

4.1. In this case, the driver has admitted his negligence before the Criminal Court and has paid the fine amount. The same driver has not been examined before the Claims Tribunal. It is the duty of the second respondent / Insurance Company to examine the driver to speak about the mode of accident, especially, the defence taken is that the injured is guilty of contributory negligence. In the absence of examination of the driver, especially in the context of driver having admitted his liability and in the absence of examination of the witness, who drew the sketch, the Tribunal ought not to have relied upon the sketch and should not have given a finding that the injured is guilty of contributory negligence.

4.2. It is important to consider the decision reported in the case of K.K.Mani vs The State, Rep. By Sub Inspector of Police, Thalaivasal Police Station Salem District (CRL.RC.No.173 of 2006), which speaks about the mode of admitting the document and evidence and the relevant observation, in the said decision, reads thus:

"It is true that the Motor Vehicle Inspector's report Ex.P8 has been marked in this case but the learned counsel appearing for the revision petitioner Mr.Gopinath, contended that this report of the Motor Vehicle Inspector has not been proved in the manner required by law. The author of this report, namely, the Motor Vehicles Inspector was not examined but his report has been marked through the Investigating Officer P.W.4, who has simply stated that he received the information of the Motor Vehicles Inspector. The learned counsel Mr.Gopinath argued that under Section 294 Code of Criminal Procedure, the formal proof of certain documents need not be by examining the author of the document but the prosecution ought to have filed a list of such documents calling upon the accused either to admit or deny the genuineness of such documents and only when the accused has not denied the genuineness and admitted the documents, the same could have been received in evidence without examining the witness connected with the document but in this case as this was not followed, Ex.P8 is inadmissible in evidence and the contents therein are not proved and therefore, it has to be taken and there is no evidence before the Court to hold that there was no mechanical

failure in the bus. He also relies upon a decision of the Full Bench of the Allahabad High Court in Saddiq vs. State (1981 Criminal Law Journal 379) wherein the Allahabad High Court has held that a document to be received without proof of the documents, shall be mentioned in the list and the opposite party or his pleader shall be called upon to admit or deny the genuineness of such procedure and only by such process, the document can be received in evidence. In this case, the investigating officer, who is not connected with the contents of this document, has simply produced it and the same has been received though it was not objected by the accused."

4.3. The procedure, which ought to have been followed, has not been followed in this case. In fact nobody has been examined on the side of the respondents. Hence, the finding on contributory negligence which is not based on evidence is liable to be set aside and set aside accordingly.

5. Now coming to the quantum of compensation, the Tribunal has taken the disablement at 55% and awarded disablement compensation at Rs.82,500 (55 X1500).

5.1. The learned counsel for the appellant would submit that the disablement compensation should be awarded at Rs.3,000/- per percentage, as per the settled practice during 2010. If that calculation is made, the disablement compensation would be Rs.1,65,000/- (55x3,000). The compensation awarded under other heads needs modification.

5.2. The loss of enjoyment of amenities should be enhanced, having regard to the old age, which would compel the claimant to seek the assistance of family members or relatives or third parties. Hence, the loss of amenities has been awarded at Rs.30,000/-. The break up details of the compensation are as under:

1. 55% disability (Rs. 55X3,000)	-	1,65,000/-
2. Pain and suffering	-	30,000/-
3. Nutrition	-	10,000/-
4. Medical Expenses	-	10,000/-
5. Attender Charges	-	9,000/-
6. Transport Expenses	-	20,000/-
7. Loss of Amenities	-	30,000/-

Total	-	2,74,000/-

6. In the result, this Civil Miscellaneous Appeal is allowed, by enhancing the compensation from Rs.92,625/- to

Rs.2,74,000/-, which is payable by the second respondent / Insurance Company, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

6.1. The second respondent shall deposit the entire amount, as ordered by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant / injured / appellant is permitted to withdraw the same. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. Motor Accident Claims Tribunal
cum Subordinate Court, Sankarai.
2. The Section Officer,
V.R.Section, High Court, Madras

C.M.A.No.1837 of 2014

LRS (CO)
VR(10/08/2017)

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