

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.02.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.1176 & 1114 of 2008

C.M.A.No.1176 of 2008

Indira Nehru ... Appellant
Vs.

1. R.Kumar

2.United India Insurance Co., Ltd.,
Divisional Office I,
104/A, Peramanur Main Road,
Salem-7. ... Respondents

C.M.A.No.1114 of 2008

Narasimhan Appellant
Vs.

1.R.Kumar

2.United India Insurance Co., Ltd.,
Divisional Office I,
104/A, Peramanur Main Road,
Salem-7.Respondents

Prayer:- Civil Miscellaneous Appeals have filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 14.08.2007 made in M.C.O.P.Nos.1097 & 1096 of 2004 respectively on the file of the Motor Accidents Claims Tribunal, Salem (Additional District Judge), Fast Track Court No.2, Salem.

For Appellant : Mr.K.Kuppusamy
(in both C.M.As.)
For R1 : Mr.P.Thirunavukkarasu
(in both C.M.As.)
For R2 : Mr.T.Ravichandran
(in both C.M.As.)

COMMON JUDGMENT

The rider and his pillion rider both who having suffered injuries in a road accident when the bike they were travelling met with an accident involving another motorcycle are the appellants herein.

2. The accident had taken place on 22.04.2004. While, the rider has suffered fracture to his right wrist, the pillion rider, a woman aged 30 years and a teacher by occupation suffered fracture to her right leg. Seeking compensation of Rs.3,00,000/-, the rider had moved the Tribunal in M.C.O.P.No.1096 of 2004 and he was awarded Rs.49,500/-. Similarly, the pillion rider too had moved the Tribunal seeking a claim of Rs.5,00,000/- and an award for Rs.90,000/- was passed. In passing the award, the Tribunal had come to the conclusion that the riders of both the vehicles which includes the claimant in C.M.A.No.1114 of 2008 are equally negligent and accordingly apportioned the liability at 50% each. Based on this finding, it reduced the compensation amount payable to the rider to Rs.24,750. So far as the pillion rider is concerned in her O.P., she has not impleaded the rider/the owner of the motorcycle in which she travelled and its insurer, as a consequences of which even she suffered 50% reduction in the amount determined.

On negligence:

3.1 So far as the negligent component is concerned, the Tribunal's finding appears to have been influenced by (a) the fact that the rider/claimant in C.M.A.No.1114 of 2008 did not appear to possess his driving license and (b) that the accident could have happened only due to negligence of both the riders. Accordingly, it apportioned the negligence-component equally on both the riders of the vehicles involved in the accident.

3.2 Strictly speaking there is no evidentiary support to come to the conclusion that both the riders are at fault in equal terms. If the evidence on record is carefully scanned, there is only a possibility to assign 35% negligence to the rider/claimant in C.M.A.No.1114 of 2008.

On quantum of damages

C.M.A.No.1114 of 2008

4. The various heads of compensation awarded by the Tribunal is tabulated below:-

Heads	Award Amount (Rs.)
Medical Expenses	9,500
Disability	25,000
Nutrition	5,000
Pain & suffering	5,000
Transportation	5,000
Total	49500

In determining the compensation for disability, the Tribunal has accepted the medical evidence which has determined his disability at 25% as against which, the Tribunal had passed an award for Rs.25,000/-. I find that given the nature of injury can be awarded Rs.2,000/- for every percentage of injury he had suffered and accordingly he is entitled to Rs.50,000/- on this head and on the other heads of compensation, in my opinion, does not want any interference. The total compensation thus payable will be Rs.74,500/-. As has already been found this amount has to be reduced by 35% and accordingly, the amount receivable as compensation is 48,425/-. This is rounded to Rs.49,000/-

C.M.A.No.1176 of 2008

5. The various heads of compensation awarded by the Tribunal is tabulated below:-

Heads	Award Amount (Rs.)
Medical Expenses	30,000
Disability	45,000
Nutrition	5,000
Pain & suffering	5,000
Transportation	5,000
Total	90,000

In determining the compensation for disability, the Tribunal had accepted the medical evidence which has determined her disability at 45% as against which, the Tribunal had passed an award for Rs.45,000/-. I find that given the nature of injury it can be awarded Rs.2,000/- for every percentage of injury he had suffered and accordingly she is entitled to Rs.90,000/- on this head and on the other heads of compensation, in my opinion, does not want any interference. The total compensation thus payable will be Rs.1,35,000/-. Since 35% of liability is to be apportioned against rider of the bike of which the claimant was the pillion rider [appellant in C.M.A.No.1114 of 2008] the amount she would be entitled to receive is determined at Rs.87,750/-. This is rounded off to Rs.88,000/-

7. In the result, both the appeals are partially allowed and the second respondent is directed to deposit

(a) Rs.49,000/- in M.C.O.P.No.1096 of 2004 (from which C.M.A.No.1114 of 2008 arises) and (b) Rs.88,000/- in M.C.O.P.No.1097 of 2004 (from which C.M.A.No.1176 of 2008 arises) less if any already deposited, with interest at 7.5%

per annum, within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To

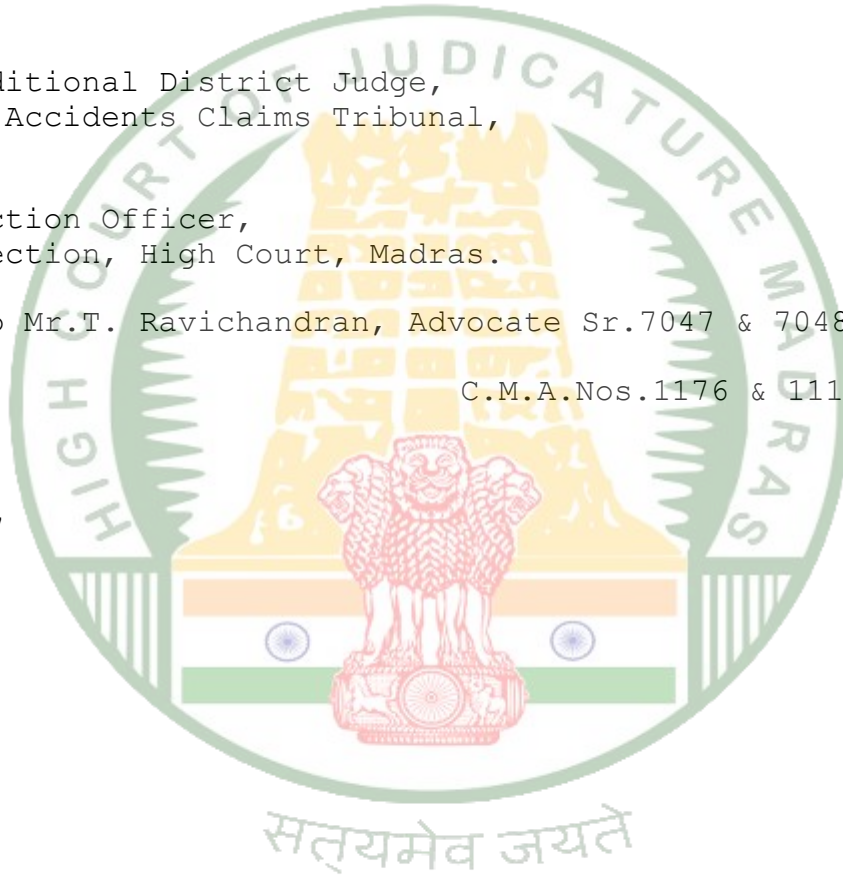
1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

2. The Section Officer,
V.R.Section, High Court, Madras.

+ 2 ccs to Mr.T. Ravichandran, Advocate Sr.7047 & 7048

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RV(CO)
Eu 4.09.17



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