

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM :

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.263 & 264 of 2006

- 1.R.Anbazhagan ... Appellant in CMA.No.263 of 2006/
Petitioner
2. K.Nagarajan ... Appellant in CMA.No.264 of 2006/
Petitioner

Vs.

- 1.R.Swaminathan
2.The Oriental Insurance Co. Ltd.,
C/o. Motor Third Party Claims Offices
No.8, Esplanade,
Chennai - 600 001. ... Respondents in both CMAs/Respondents

Common Prayer : Civil Miscellaneous Appeals preferred under 173 of the Motor Vehicles Act, against the judgment and decree made in MCOP. Nos.2823 and 2824 of 1997 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court at Chennai dated 17.09.2004.

For Appellant : Mr.T.G.Balachandran
For Respondents : Mr. M.J.Vijayaraghavan for R2
R1 - No appearance

COMMON JUDGMENT

These twin appeals arise out of an accident involving two motor cycles that took place on 11.06.1996. It had happened at Madley Road Subway, T.Nagar, Chennai. The motor cycle bearing registration No.TN-09-6269 was driven by one Anbazhagan, who was going up the road, whereas the other motor cycle was one bearing registration No.TN-07-A-4517, of which, one Nagarajan was a pillion rider and it was on the descending track. In the accident, both Anbazhagan, the rider of Yamaha TN-07-A-4517 and Nagarajan, the pillion rider of Hero Honda motor cycle bearing registration No.TN-09-6269 suffered injuries. Both of them moved the Tribunal making separate claims for compensation for the injuries that they have suffered. After enquiry, the Tribunal has found that the riders of both the motor cycle have contributed in equal terms for the occurrence of the accident and accordingly apportioned the negligence equally. On the point of compensating the injuries suffered by the claimants, it fixed the compensation at Rs.36,150/- for Anbazhagan [in MCOP.No.2823/1997]

and Rs.31,662/- for Nagarajan [in MCOP.No.2824/1997]. Consistent with its finding in apportioning the negligence, the Tribunal reduced the compensation payable to both by half. This award is being challenged Vide separate appeals by both the claimants.

2. The learned counsel appearing for the appellants submitted that Nagarajan, one of the claimants and the pillion rider has deposed and supported the case of the claimant in the other case, who has already stated himself was a pillion rider of one of the motor cycles involved in the accident. Secondly, the learned counsel canvassed that the Tribunal has failed to grant compensation for the disability that arose out of the injuries suffered by the claimants in the accident.

3. Per contra, the learned counsel appearing for the Insurance Company contended that the approach of the Tribunal on the point of negligence is in order and the award need not be interfered with.

4. On the point of negligence, this Court finds that the evidence of P.W.3 might have to be taken with a pinch of salt. The dynamics of no accident can be re-created to precision and this Court cannot ignore the fact the way the motor cycles are generally driven in our roads, there is nothing surprising for motor cycles to get involved in the accident. Further, the accident has taken place in the middle of the road. There is no evidence to support if there were any intervening factors that made the accident unavoidable for atleast one of the claimants viz., Anbazhagan, and under the circumstances, the factum of apportioning negligence equally on riders of both the motor cycles cannot be interfered with. Turning to compensation part of it, to start with, there is one fundamental merit in the submissions of the learned counsel for the appellants, in that the Tribunal has literally overlooked the factum of disability suffered by the parties. The disability may be permanent or partial and in a given case it can also be functional. The Tribunal while fixing its compensation necessarily need to compensate the victim of an accident after evaluating the nature of injury justly and fairly.

CMA.No.263 of 2006 [MCOP.No.2823/1997 - Claimant-Anbazhagan]: In this case the claimant, the rider of the motor cycle is stated to have suffered fracture of right femur, but appeared to have been treated only some four and a half months after the accident for his fracture. He has also suffered injuries to shaft of right femur and plates were implanted for treating the fracture that he had suffered and P.W.4, the doctor Vide Ext.P19, medical certificate has assessed the extent of disability at 55%. He however, was not an orthopaedist. He has also noticed shortening of leg by an inch. The fact is being what they are, it still remains that the appellant is only running a vegetable shop and therefore, the nature of injuries that he has suffered may not impact adversely his ability to continue with his avocation. I therefore reckon the extent of disability at 40% and ordered

Rs.80,000/- on the head of disability. On the head of pain and suffering, I enhance the compensation from Rs.10,000/- to Rs.20,000/- and for assistance, I grant another Rs.5,000/-. In other aspects, the award of the Tribunal is hereby confirmed. In fine, the compensation is enhanced from Rs.36,150/- to Rs.1,41,150/-.

CMA.No.264 of 2006 [MCOP.No.2824/1997 - Claimant-Nagarajan]:
The claimant in this case appeared to have suffered fractures of left clavicle, head injury besides other injuries and the extent of disability is assessed at 30%. This Court takes the above said figure on his face and award Rs.60,000/- towards disability. On the head of pain and suffering, the same is enhanced to Rs.10,000/- and for extra nourishment, it is increased by Rs.5,000/-. In other aspects, the award of the Tribunal is hereby confirmed. In fine, the compensation is enhanced from Rs.31,662/- to Rs.86,662/-.

5. As stated earlier, the amount herein awarded is reduced by 50% in view of the contributory negligence of both the riders of motor cycles involved in this accident.

6. In the result, these appeals are partially allowed without costs. The respondent/insurance company is directed to deposit the award amounts to the claimants along with accrued interest, less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order, and the claimants are permitted to withdraw the same forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ds
To:

1. The Motor Accident Claims Tribunal
III Small Causes Court, Chennai.

2.The Section Officer, Vr Section,
High Court, Madras.

+ 2 ccs to Mr.M.J. Vijayaraghavan, Advocate Sr.51639

C.M.A.Nos.263 & 264 of 2006

SKS (CO)

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