



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.170 of 2015

P.Kamaraj

... Appellant/Claimant

Vs.

1.S.Murugan

2.P.Shanmugam

3.The Manager,

Royal Sundaram Alliance Insurance

Company Limited,

Sundaram Towers,

No.45 & 46, Whites Road,

Chennai-600 014.

... Respondents/ Respondents

(Since the 1st and 2nd respondents

remained Exparte before the Tribunal,

notice to R1 & R2 may be dispensed with)

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2011 made in M.C.O.P.No.14 of 2010 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Karur.

For Appellant

: Mr.V.Balaji

For Respondents

: R1 & R2-remained exparte

Mrs.K.R.Shivashankari

for Mr.S.Srinivasaraghavan for R3

JUDGMENT

Heard the learned counsel for both parties.

2.The claimant has filed this appeal on two grounds. He is aggrieved by the fixation of 50% contributory negligence on him. He also seeks enhancement. The claimant was riding a two-wheeler. When the door of the parked car was suddenly opened by the car driver, the two-wheeler hit against the front door of the said parked car. In the resulting accident, the claimant suffered multiple injuries including fractures. The Tribunal held that the rider of the two-wheeler must have kept a watch while crossing the parked vehicle to see if the door is opening or not. Such a standard of care cannot be exercised by the rider of a two-wheeler. I am not able to accept the said reasoning of the Tribunal for fixing the contributory negligence.



3.As rightly pointed out by the learned counsel for the appellant by placing reliance on a decision of the Supreme Court reported in **2014 (1) TN MAC 456 (SC)-Meera Devi & another Vs.H.R.T.C. & others**, to prove the contributory negligence, there must be cogent evidence. The onus lies on the person who pleads contributory negligence. In the present case not only FIR but the final report was also lodged against the car driver. The car driver pleaded guilty and paid the fine amount before the Criminal Court. It is true that in the claim proceedings, he deposed in support of the Insurance Company. The Tribunal has not taken note that though the criminal proceedings were not binding on the Tribunal, they ought to have been taken note of in this case. I am constrained to interfere with the said finding of the Tribunal with regard to the fixing of contributory negligence on the claimant. I am of the view that the claimant was not at fault. It was only the car driver who was wholly at fault. The compensation awarded to the claimant also is very low. Therefore, the compensation payable to the claimant will have to be reworked as under:-

Sl.No	Heads	Amounts in Rupees
1.	Pain and suffering	Rs. 50,000/-
2.	Disability	Rs. 50,000/-
3.	Medical expenditure	Rs. 1,00,000/-
	Total	Rs. 2,00,000/-

4.The claimant is entitled to the said sum of Rs.2,00,000/- as compensation. The award passed by the Tribunal is modified and enhanced from Rs.1,58,820/- to Rs.2,00,000/-. The third respondent is directed to pay the award amount of Rs.2,00,000/- with interest at 7.5% per annum and costs from the date of petition till the date of realization, within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited if any. The claimant is permitted to withdraw the entire amount, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal. This Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar



To

The Chief Judicial Magistrate ,
Motor Accidents Claims Tribunal
Karur.

WEB COPY

+1cc to Mr.V.Balaji, Advocate Sr.No.84692

+1cc to Mr.S.Srinivasaraghavan, Advocate Sr.No.85083

TSG

VB/MR/KKR/SAR3/14/12/2017/3P/4C

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