



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.11.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.199 of 2015

Kannan

... Appellant / Claimant

Vs.

1.M.Sundararaj

2.M/s.Shriram General Insurance Company Limited,
Represented through its Authorized Signatory,
No.30, Hakkim Ajmal Khan Road,
(Ground Floor), Chinna Chokkikulam,
Near ICICI Bank,
Madurai-625 002.

... Respondents / Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.10.2014 made in M.C.O.P.No.442 of 2012 on the file of the Motor Accident Claims Tribunal/IV Additional District Judge, Madurai.

For Appellant : Mr.N.Sudhagar Nagaraj
For Respondents : Mr.D.Sivaraman for R2
No Appearance for R1

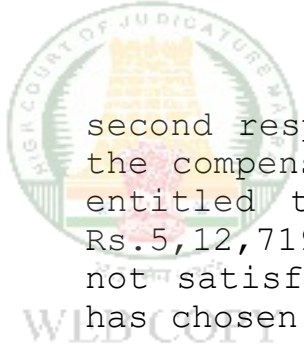
JUDGMENT

Heard the learned counsel on either side.

2.The claimant has filed this appeal seeking enhancement. He was a pillion rider in a two-wheeler which was insured with the second respondent herein. The said two-wheeler was in a parked condition. Another two-wheeler viz., Star City came and dashed against this parked two-wheeler. The appellant herein was the defacto complainant in the criminal case that was registered against the rider of the other two-wheeler by name Vijayanath.

2.According to the claimant, the entire negligence was on the said Mahalingam, who was the rider of the two-wheeler in which he was a pillion rider. But whereas in the FIR, liability is fastened on the rider of the other two-wheeler, namely, Vijayananth. Thus, the averments in the claim petition and the averments in the FIR do not get together.

3.Considering these aspects, the Tribunal chose to apportion negligence between the rider of the two-wheeler and the rider of the other two-wheeler viz., Vijayananth. That is why, 70% negligence came to be fixed on the first respondent. Consequently, the



second respondent herein is directed to make liable to pay 70% of the compensation amount. The Tribunal held that the claimant was entitled to a sum of RS.7,32,455/- and 70% of the same being Rs.5,12,719/- was fastened on the second respondent herein. Being not satisfied in the award passed by the Tribunal, the appellant has chosen to file this present appeal.

4.The learned counsel appearing for the appellant would point out that only a sum of Rs.25,000/- was awarded towards pain and suffering. The claimant was an inpatient for more than 75 days in the hospital. He had also suffered fractures in his right Scapula region. Though the appellant had not suffered any functional disability, the Tribunal chose to adopt the multiplier method. This is seriously questioned by the learned Standing counsel for the second respondent.

5.Therefore, considering the over-all circumstances of the case, particularly, the stand taken by the claimant in the claim petition is different from the stand taken in the FIR, I am inclined to enhance the damages awarded under the head of pain and suffering alone. The amount awarded towards pain and suffering is hereby enhanced to Rs.1,25,000/- from Rs.25,000/-. The award is not disturbed in any other aspects. Since the compensation is enhanced by a further sum of Rs.1,00,000/-, the second respondent will have to bear 70% of the enhanced liability. The second respondent shall pay a sum of Rs.70,000/- being the 70% of Rs.1,00,000/-.

6.The award dated 20.10.2014 made in M.C.O.P.No.442 of 2012 on the file of the Motor Accident Claims Tribunal/IV Additional District Judge, Madurai is modified accordingly.

7.The second respondent is directed to deposit the entire compensation amount of Rs.5,82,719/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.

8.This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/



1.The IV Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.N.Sudhagar Nagaraj, Advocate SR.No. 87149

+2cc to M/S.D.Sivaraman, Advocate SR.No. 87427, 86826

C.M.A. (MD) No.199 of 2015
14.11.2017

TSG

JM/KK/SAR 1/21.12.2017/3P/6C