

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1793 of 2004

Manoharan

...Appellant/Petitioner

Vs

1.C.Nallamuthu

2.P.Malaiyandi

3.The New India Assurance Company Limited,
238/239, Pollachi Road,
Udumalapettai.

4.J.Jeyandrakumar

5.The New India Assurance Company Limited,
Kumaran Shopping Complex,
Kumaran Road,
Tiruppur.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 24.12.2002 made in M.C.O.P.No.212 of 1997 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Fast Track Court No.IV, Coimbatore at Tiruppur.

For Appellant : Mr.T.Sezhian
for M/s.R.Meenal

For Respondents : M/s.A.Salomi for R3 & R5
for Mr.C.Ramesh Babu

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 24.12.2002 made in M.C.O.P.No.212 of 1997 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Fast Track Court No.IV, Coimbatore at Tiruppur.

2. The facts of the case are as follows :-

On 20.10.1996 at about 8.45 p.m., the claimant was travelling as a pillion rider in a Motorcycle bearing Registration No.MDM 2192. While the motorcycle was proceeding

towards south in Palladam Pollachi Road, the driver of the said Motorcycle drove it in a rash and negligent manner and dashed against a Scooter bearing Registration No.TN 39 E 2574, which came in the opposite direction. Due to the accident, the claimant sustained severe injuries including fracture. The claimant has claimed a sum of Rs.5,00,000/- as compensation for loss of income and for disability. The vehicle viz., the Motorcycle was insured with the third respondent.

3. The claimant has stated in the claim application that the compensation has to be paid by the driver/owner and insurer of the Motorcycle bearing registration No./MDM 2192. The third respondent/New India Assurance Company Limited has denied the accident and the other facts relating to the income, disability and the excess claim made by the claimant.

4. The Tribunal, after analyzing the evidence and documents, has given a finding that the claimant has not proved which vehicle was at fault. As a result, the Tribunal held that the accident was not clearly proved by the claimant and hence it has stated that, since the claimant has not proved the rash and negligent driving on the part of both the driver of the vehicles, it has awarded a sum as "no fault liability" and the liability is fixed on the respondents 1 & 2 to pay a sum of Rs.25,000/-. Aggrieved against the said award, the claimant has preferred this Appeal.

5. In the grounds of appeal, the appellant/claimant has stated that the Tribunal has committed an error by awarding a meager sum as compensation under "no fault liability". The Tribunal has also failed to note that, even if it is not proved on whose negligence the accident occurred, the claimant, who was travelling as a pillion rider, has to be compensated. The claimant has also stated that the other aspects regarding the claimant sustaining injury in the head, disability, medical expenses, etc., were not considered by the Tribunal.

6. Heard both sides.

7. On the side of the appellant/claimant, it is argued that though it is stated in the claim petition that the accident occurred only due to the rash and negligent driving of the driver, the Tribunal has not considered that aspect and the finding that the claimant has not proved the negligence is not justified one. Further, it is argued by the appellant that FIR was registered against the vehicle, in which the claimant was travelling as a pillion rider. However, in the absence of the eyewitness, on the clear evidence of the claimant, there cannot be a finding that the case has to be dealt with one as "no fault liability". Unless, both the vehicles contributed the negligence, the accident would not have occurred. Though the FIR has been registered against the rider of the Motorcycle, in

which, the claimant was travelling, it is also on evidence that both the vehicles, driven by their drivers in a rash and negligent manner caused the accident and thus the liability was fixed on both the vehicles.

8. On perusal of the records, it is observed that, especially the findings, viz., "மோட்டார் சைக்கிளும், ஸ்கூட்டரும் ஆக இரண்டு வண்டிகளும் வேகமாக ஓட்டப்பட்டு நேருக்கு நேர் மோதியதாகவும், இந்த விபத்து இரண்டு பேரும் காரணம் என்பதாகவும் கூறி இருக்கிறார்."

It is also observed by the tribunal that "விபத்து நடந்த முறை பற்றி கூறுவதற்கு வேறு சாட்சிகள் எவரும் விசாரிக்கப்படவில்லை".

Thus it is clear that both the drivers of the vehicle contributed their fault to the accident.

9. Coming to the quantum of compensation, it is observed that the claimant has suffered injuries including fracture. Exs.P2 to P7 proves the nature of injury sustained by the claimant and also the treatment taken by him. Ex.P8 is the history of medical reports filed before the Tribunal. Ex.P9 is discharge summary, which also reveals the fact that the claimant was under treatment for the said injuries. Ex.P11 is the disability certificate filed through P.W.3, who was spoken to the fact that the claimant has sustained 60% permanent disability.

10. The Tribunal considered the nature of the injury and also the age of the claimant as 25 years. Though it has been stated by the claimant that he was working in a Tyre shop attached with vulcanizing work, the claimant has not produced any evidence before the Tribunal in support of his claim.

11. Considering the findings rendered by the Tribunal that the drivers of both the vehicle contributed their part caused the accident, the fact that the claimant was a pillion rider and also taking into account the nature of the injury and the age of the claimant - 25 years, this Court is of the opinion that instead a sum of Rs.25,000/- awarded by the Tribunal is no valid liability, a sum of Rs.59,500/- can be awarded as compensation to the claimant under the following heads :-

Heads	Modified amount
For Loss of Income	7,500.00
For Disability	30,000.00
For Pain and suffering	10,000.00
For Nourishment	5,000.00
For Transport expenses	2,000.00

Heads	Modified amount
For Medical expenses	5,000.00
TOTAL	59,500.00

12. With the above enhancement, this Civil Miscellaneous Appeal is allowed. No costs.

13. The respondents 1 to 3 are hereby directed to deposit the enhanced award amount, less which is already deposited to the credit of MCOP No.212 of 1997 on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Fast Track Court No.IV, Coimbatore at Tiruppur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is directed to withdraw the same by filing in proper application before the Tribunal.

lpp

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal-cum-
Additional District Judge,
Fast Track Court No.IV,
Coimbatore at Tiruppur.

+1CC Mr.R.Subramanian, Advocate, SR.No.67996
+1CC Mr.C.Ramesh Babu, Advocate, SR.No.67714

सत्यमेव जयते

CMA.No.1793 of 2004

GJ-II (CO)
KAK (30/11/2018)

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