

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1603 of 2005

S.Pratap Singh

... Appellant/Petitioner

..Vs..

1.The Chairman & Managing Director,
M/s. Metronex Cars & Bikes Ltd.,
No.534, 535, Mount Road,
Chennai - 600 018.

2.The Oriental Insurance Co. Ltd.,
Esplanade,
Chennai - 600 108.

3.R.Sakthinarayanan

4.R.S.Sivaprakasam

5.S.Sanathi Prasad

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in M.C.O.P.No.467 of 1996 dated 14.08.2003 on the file of the VI Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : R2 - Mr.J.Chandran
R1, R3, R4 & R5 - No appearance

JUDGMENT

The appellant is the claimant in M.C.O.P.No.467 of 1996 on the file of the VI Judge, Small Causes Court, (Motor Accidents Claims Tribunal) Chennai.

2.The brief case of the appellant/claimant is as follows:

On 08.09.1995, the appellant/claimant was travelling in a two wheeler bearing Registration No.TN-01-3675 as a pillion rider along Brindavan Street, Mambalam, Chennai. When he was nearing another street by nam Nakkiran Street, a speeding Maruti Car bearing Registration No.PY-01-C-5254 hit the two wheeler as a result of which, the claimant sustained injuries all over his body. According to the appellant/claimant, the rash and negligent driving of the driver of the Maruti Car bearing Regsitration No.PY-01-C-5254 was the cause of the accident and that since, the said car was insured with the Oriental Insurance Company Limited and leased out to the fifth respondent, all of them are jointly and severally liable to pay the compensation to him. The first respondent and fourth respondent remained absent before the tribunal and therefore, they were set exparte. The other respondents contested the petition by filing their respective counters.

3. The learned VI Judge, Small Causes Court, (Motor Accidents Claims Tribunal) Chennai, after analysing the evidence on record, awarded a sum of Rs.4,35,000/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. However, the fifth respondent lessee and the Oriental Insurance Company were exonerated from paying the compensation amount, since it was found that the Maruti Car bearing Registration No.PY-01-C-5254 was not insured with the Oriental Insurance Company Limited on the date of the accident.

4. The appellant/claimant, not satisfied with the quantum of compensation awarded by the tribunal has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of compensation.

5. Mr.A.Shanmugaraj, learned counsel for the appellant fairly conceded that the Maruti Car was not insured with the Oriental Insurance Company Limited on the date of accident. In fact, the claimant had given up his claim against the insurance company and also made an endorsement to that effect. Therefore, the appeal against the Oriental Insurance Company is dismissed.

6. Mr.A.Shanmugaraj, learned counsel for the appellant would contend that the Martui Car bearing Registration No.PY-01-C-5254 belonged to the first respondent and he had leased out the same to one Mr.Shanthi Prasad, the fifth respondent. He also contended that the first respondent's firm was closed and the proprietor of the said firm was impleaded as the the third

respondent in the original MCOP.No.467/1996. His specific contention is that the tribunal should have fixed liability not only on the owner of the Maruti car but also against the person who is in possession of the car as lessee. Reliance was placed upon the following decisions.

- 1) Samundra Devi and others Vs. Narendra Kaur and others, reported in 2008 ACJ 2616.
- 2) Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and others, reported in 1997 AIR (SC) 3444 and
- 3) P.P.Mohammed Vs. K.Rajappan and others, reported in 2003 ACJ 1595.

7. In all the above decisions, it has been clearly laid down that the expression 'owner' includes the person in actual possession and control of the vehicle and that such person shall be vicariously liable for compensation for the wrong committed by the driver. As far as the present case is concerned, the claimant has contended that the first respondent is the owner of the vehicle and he has leased out the said vehicle in favour of the fifth respondent. Therefore, the tribunal was wrong in exonerating the fifth respondent when he was in actual possession of the vehicle as per the records. In fact, the third respondent, the proprietor of the first respondent firm examined himself as RW2 and has deposed that he leased out his vehicle in favour of the fifth respondent and filed sufficient documentary evidence to substantiate his contention. Therefore, the trial Court was wrong in exonerating the fifth respondent from paying compensation amount to the appellant/claimant. Applying the principles laid down in the rulings cited above. I hold that the respondents 1,3,4 and 5 are jointly and severally liable to pay compensation to the appellant/claimant.

8. Mr.A.Shanmugaraj, the learned counsel for the appellant would further contend that the award passed by the tribunal is very meagre, especially when the appellant/claimant has sustained (i) compound fracture of right femur, (ii) fracture of patelle right, and (iii) compound fracture of both bones right leg with extensive degloving. His further contention is that multiplier method should have been adopted by the tribunal while assessing the permanent disability of the appellant/claimant. According to the appellant/ claimant, he was working in IGGI-Resorts International Ltd., earning a sum of Rs.5,283/- per month. Dr.Saichandran (PW2) has assessed the partial permanent disability as 65%. The trial Court awarded a sum of Rs.75,000/- for the partial permanent disability., apart from awarding a sum of Rs.1,00,000/- for future loss of income. As far as the present case is concerned, there is no functional disability as the appellant/claimant was working as a Regional

Manager in IGIG-Resorts International Limited.

9. The learned counsel for the appellant would contend that on account of the accident, the appellant/claimant had to resign his post and that no company is willing to offer him any job.

10. As per the medical records there is no permanent disability and the appellant/claimant at the most might experience some difficulty in doing his day to day work. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

"The Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is a permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The

second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100%

(or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

11. Applying the aforesaid principle, I hold that multiplier method is not warranted as far as the present case is concerned. Since the accident took place in the year 1995 a sum of Rs.1,30,000/- (2000 x 65/100) is awarded for partial permanent disability. The enhanced award amount under various heads is extracted hereunder:-

S.Nos.	Heads	Amount granted
1.	Permanent disability	1,30,000/-
2.	Pain and sufferings	25,000/-
3.	Loss of amenities	10,000/-
4.	Attender's charges	10,000/-
5.	Future medical expenses	50,000/-
6.	Medical expenses	2,73,711/-
7.	Loss of income	31,698/-
8.	Transportation charges	10,000/-
9.	Extra nourishment	31,698/-
Total		5,50,409/-

12. Thus, the appellant/claimant is entitled to a compensation of Rs.5,50,409/- together with interest at the rate of 7.5% per annum from the date of claim petition, till the date of deposit.

13. The respondents 1,3,4 and 5 are jointly and severally liable to pay the compensation of Rs.5,50,409/- to the appellant/ claimant. The Oriental Insurance Company, namely, the second respondent is fully exonerated from paying the compensation amount to the appellant/claimant. The respondents 1,3,4 and 5 are directed to deposit the said amount along with interest and costs, less the amount if any, already deposited by them, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the appellant/claimant is at liberty to withdraw the entire amount after following necessary procedure. The appeal against the

Oriental Insurance Company Limited is dismissed.

14. With the above observations, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

dna

To

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

2. The Chairman & Managing Director,
M/s. Metronex Cars & Bikes Ltd.,
No.534, 535, Mount Road,
Chennai - 600 018.

+1cc to Mr.J.Chandran, Advocate SR.No.83960

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.84275

C.M.A.No.1603 of 2005

KJ(CO)
GMY(27/02/2019)

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