

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 14.11.2018

DELIVERED ON 20.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.975 of 2004

1. Ramachandran (died)
2. Ambika

(2nd petitioner brought on record as L.R of the deceased sole petitioner viz. Ramachandran, vide order of this court dated 03.02.1017 made CMP No.1088 to 1090 of 2008 in CMA 975 of 2004.

...Appellants/Petitioner

Vs.

1. Murugan
2. The Divisional Manager,
National Insurance Company Limited,
J.N.Street,
Pondicherry.

...Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of Award passed in M.C.O.P.No.65 of 2002 dated 09.12.2002 by the III Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Pondicherry.

For Appellant : Mr.R.Natarajan
For 2nd Respondent : Mr.J.Chandran
For 1st Respondent : No apperance

J U D G M E N T

The first appellant (since deceased) filed MCOP No.65 of 2002 before the III Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Pondicherry claiming compensation of Rs.5,75,000/- for the injuries sustained by him in a road accident.

2. During the pendency of this appeal, the first appellant died and his wife was brought on record as second appellant.

3. On 08.06.2001, the first appellant was riding his two wheeler TVS Suzuki bearing registration No. PY 01 N 8635 on Thirukkannur-Mannadipet Road. At about 16.30 hours, a speeding tractor bearing registration No. TAN 5018 hit the two wheeler, as a result of which, the first appellant sustained grievous injuries.

4. The owner of the tractor and the insurer of the tractor resisted the claim petition by filing their counters. Both of them have denied their liability.

5. The learned III Additional District Judge, Motor Accidents Claims Tribunal, Pondicherry, after analysing the evidence on record, awarded a compensation of Rs.69,000/- to the claimant. However, he deducted 50% of the claim amount towards contributory negligence on the part of the first appellant, since he did not possess a valid driving licence. Thus, the first appellant's award amount was only Rs.34,500/- together with interest at the rate of 9% p.a.

6. Aggrieved over the said quantum of compensation awarded by the Tribunal, the first appellant filed this appeal,

7. Mr.R.Natarajan, learned counsel for the appellant relied on the following decisions

[i] Dinesh Kumar Vs. National Insurance Company reported in (2018) 1 SCC 750

[ii] Sudhir Kumar Rana Vs. Surender Singh and others reported in (2008) 12 SCC 436.

and contended that merely because a person does not have a driving licence, he cannot be held to have contributed to the accident.

8. A perusal of the order passed by the trial court shows that the trial court has found that the driver of the tractor driving his vehicle rashly, and the first appellant/claimant driving his two wheeler negligently, as he did not possess a driving licence. Such an observation by the trial court without any proof is totally unsustainable.

9. A contributory negligence is a negligence in not avoiding the consequences arising from the negligence of some other person, when sufficient reasons and opportunity are afforded to do so.

10. In the case of Sudhir Kumar (stated supra) it was held that

" If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence, but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.

11. The petitioner was working as a peon in Labour Department, Pondicherry on the date of accident. He sustained fracture on his left leg. Since he was working as a peon, he would have joined duty after taking medical treatment. Further more, no evidence was adduced by him that he suffered loss of pay on account of the accident. Therefore, no amount is awarded towards loss of income. Since the disability is assessed as 44%, a sum of Rs.1,32,000/- is awarded towards loss of earning capacity. Apart from that, a sum of Rs.5,000/- and Rs.2,000/- are awarded towards pain and sufferings, extra nourishment and transportation charges respectively. As per Ex.A9 and Ex.A12 to Ex.A15, the actual medical expense is Rs.4980+420+340= 5740. Thus, the quantum of compensation awarded by the Tribunal is enhanced as follows.

Sl.No	Heads	Amounts in Rs.
1	Loss of earning capacity	1,32,000
2	Pain and sufferings	5,000
3	Extra nourishment	5,000
4	Transportation charges	2,000
5	Medical expenses	5,740

Sl.No	Heads	Amounts in Rs.
	Total	1,49,740

In the result,

(i) The first appellant is entitled to a compensation of Rs.1,49,740/-, which shall carry interest at the rate of 7.5% p.a. from the date of claim petition.

(ii) The Insurance company shall deposit the modified award, less the amount already deposited, within a period of 2 months from the date of receipt of a copy of this order and on such deposit being made, the second appellant can withdraw the entire amount.

(iii) With the above observations, the appeal is disposed of. No order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District Judge,
Motor Vehicle Accidents Claims Tribunal,
Puducheery.

+1cc to Mr.J.Chandran, Advocate, S.R.No.79101

+2cc to Mr.R.Natarajan, Advocate, S.R.No.79022

सत्यमेव जयते

CMA.No.975 of 2004

RK(CO)

GSP(01/02/2019)

WEB COPY