

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.10.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE S. RAMATHILAGAM

C.M.A.No.476 of 2005

Singaravel

... Appellant

Versus

1.Sivalingam

2.M/s. New India Assurance Co. Ltd.,
Cuddalore.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.11.2003 made in M.C.O.P.No.789 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, FTC - II), Cuddalore.

For Appellant	:	Mr. D.Baskar
For Respondents	:	No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 19.11.2003 made in M.C.O.P.No.789 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, FTC - II), Cuddalore.

2. The facts of the case are as follows :

On 12.04.2001 at about 6.00 p.m., the claimant, while he was proceeding to his house in his Bullock Cart, he stopped the said cart on the road side, to drink water in the Shanmugam Motor Shed and when he was proceeding from south to north to cross the road, the vehicle belonging to the first respondent Motorcycle bearing Registration No.TN 31 B 5905, driven by its driver in a rash and negligent manner, hit against the claimant and caused severe injuries all over the body. The claimant was taken to the hospital and steel plate was fixed for the fracture injury. The claimant has claimed a sum of Rs.10,00,000/- as compensation for disability, loss of income, pain and suffering

and medical expenses. The first respondent had disowned the liability by saying that at the time of accident, the motorcycle was insured with the second respondent/Insurance Company and further the rider of the motorcycle had a valid license. Hence, the Insurance Company is liable to pay the compensation.

3. The second respondent/Insurance Company has filed a counter statement, wherein it denied the license, permit and registration of the said vehicle and further denied the accident by saying that it is a negligence on the part of the claimant, who crossed the road and that the accident had occurred .

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident had occurred, while the claimant had crossed the road carefully and at the same time, the rider of the motorcycle was also very careful while driving the vehicle in a controllable speed. Hence, the Tribunal has given a finding that both the claimant and the first respondent/rider are equally responsible for the accident and fixed the liability equally. The Tribunal, after verifying the documents regarding injury, treatment and disability, has awarded a sum of Rs.1,41,200/- and out of the said amount, 50% of the amount i.e., Rs.70,000/- alone, the respondents 1 and 2 are liable to pay as compensation to the claimant. Aggrieved against the same, the claimant has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that it is the rider of the motorcycle, who alone had the last opportunity to avoid the accident as such, hence, the entire negligence was on the part of the motorcyclist. The motorcyclist had not driven his vehicle at a moderate speed. If he had driven the same in a moderate speed, he could have very well avoided the accident. Hence, the apportioning liability against the claimant is very much aggrieved. The claimant has also stated that the driver of the motorcycle has admitted and paid fine in STC.No.1385 of 2001, regarding the sum awarded under disability and the income taken by the Tribunal. The sum awarded under medical bills are all very much stated as a meager amount by the appellant.

6. No appearance on the side of the appellant as well as the respondents.

7. On a perusal of the records, it is observed that, the accident occurred at the time when the claimant crossed the road. Hence, the Tribunal fixed the liability at 50% on the side of the claimant and 50% on the side of the motorcyclist. The claimant has not stated anything. But the rider of the motorcycle, admitted the accident and paid fine. There is no

document produced by the appellant. Hence, the finding of the Tribunal, fixing the liability at 50% on the claimant and 50% of the rider of the motorcycle are quite proper. While coming to the injury sustained by the claimant, in the Accident Register Ex.P3 issued by the Cuddalore Krishna Hospital, wherein, it is found that the claimant sustained totally 5 injuries and only one injury in the right leg is a grievous injury. Hence, that was properly considered by the Tribunal. P.W.2 is the Doctor, by name Nandakumar, who has deposed before the Tribunal that steel plates were fixed for the injury sustained by the claimant and he was also under treatment from 12.04.2001 to 15.04.2001. The disability certificate Ex.P8 reveals the fact that the claimant has sustained 40% disability. But the Tribunal has taken at 25% disability and awarded a sum of Rs.25,000/-. The other aspect regarding the medical expenses taken by the Tribunal at Rs.30,000/- against Rs.35,912/-. As per the claim of the claimant, he is a coolie and his loss of income per annum is calculated at Rs.3,600/-.

8. The sum awarded by the Tribunal under the following heads:

Heads	Amount awarded by the Tribunal (Rs.)
For Pain and Suffering	25,000.00
For loss of income	61,200.00
For Medical Expenses	30,000.00
For Disability	25,000.00
Total Compensation	1,41,200.00

Hence, the Tribunal has properly considered the nature of injury, treatment, medical expenses incurred by the claimant and loss of income was arrived at by taking into consideration, the fact that at the time of accident, he was a coolie and as per the liability of the 50%, the Insurance Company is liable to pay Rs.70,000/- as compensation. This Court is unable to see any reason to interfere with the findings of the Tribunal in this appeal regarding the claim of the claimant.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Additional District Judge, FTC - II),
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

CMA.No.476 of 2005

CP(CO)
GSP(15/11/2018)



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