

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2045 of 2015

N.Ramesh

.. Appellant

Vs.

1.M.Mahendran

2.B.Raja

3.United India Insurance Company Limited
Shanmuga Complex
1-15, 24-H
First floor, New Edappadi road
Sankari, Salem District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2015 made in M.C.O.P.No.1691 of 2010 on the file of the Motor Accidents Claims Tribunal / Special Sub Court No.1, Salem.

For Appellant : Mr.C.Prabakaran

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 09.03.2015 made in M.C.O.P.No.1691 of 2010 on the file of the Motor Accidents Claims Tribunal / Special Sub Court No.1, Salem.

2.The appellant is the claimant in M.C.O.P.No.1691 of 2010 on the file of the Motor Accidents Claims Tribunal / Special Sub Court No.1, Salem. He has filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.04.2010.

3.The Tribunal considering the pleadings and oral and documentary evidence held that both the appellant and driver of the lorry are equally responsible for the accident, fixed 50% negligence on the part of the appellant and 50% negligence on the part of the driver of the lorry and awarded a sum of Rs.1,46,000/- as compensation to the appellant.

4.Aggrrieved against the award of the Tribunal, the appellant has come out with the present appeal challenging the portion of the award fixing 50% negligence on the appellant and for enhancement of compensation.

5.The learned counsel for the appellant contended that fixing 50% negligence on the part of the appellant by the Tribunal is unsustainable and the Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre. The total compensation awarded by the Tribunal is very low and fixing 50% negligence on the part of the appellant is contrary to the evidence on record. Therefore, he prayed for setting aside the award fixing 50% negligence on the part of the appellant and for enhancement of compensation.

6.Though notice served on the respondents and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

7.Heard the learned counsel for the appellant and perused the materials available on record.

8.The appellant has claimed compensation on the specific case that the first respondent/driver of the lorry belonging to the second respondent dashed against his motor cycle from behind. The appellant has lodged complaint only after 12 days of accident. A perusal of Ex.X4, copy of the vehicle inspection report and Ex.R1, bill verification investigation report reveals that front side of the motor cycle was only damaged and there was no damage to lorry. Further, the complaint lodged by the appellant was investigated and the same was closed as 'mistake of fact'. The Sub-Inspector of Police was examined as R.W.1 and through him, the final report with documents was filed in the Court and the same was marked as Ex.X3. Notice was served on the appellant, the Court has taken final report on file and issued R.C.S.No.15 of 2010. The third respondent examined the Doctor as R.W.2, who treated the appellant and R.W.2 has deposed that he treated the appellant on the date of accident and the appellant informed him on the date of accident that he has fell down from his motor cycle and suffered injuries. R.W.2 further deposed that the appellant did not inform him about the accident and had he informed that he sustained injuries due to the accident, he would have informed the police. From the evidence

of R.W.1 and R.W.2, it is clear that the accident has not occurred due to negligence on the part of the first respondent.

9.Considering the materials available on record in its entirety, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. The third respondent/Insurance Company is directed to deposit entire award amount along with accrued interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount, after adjusting the amount, if any, already withdrawn. No costs.

Sd/-
Assistant Registra

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Special Sub Judge I, Salem.
2. The Section Officer, VR Section,
High Court, Madras. (2 Copies)

+lcc to Mr..Prabakaran, Advocate SR.No.77313

C.M.A.No.2045 of 2015

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