

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.06.2019	Pronounced on 09.08.2019
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1164 of 2006
and
CMP.No.4846 of 2006

M/s. New India Assurance Company Limited
Third Party Cell
1st Floor, 46, Moore Street
Chennai - 1.

... Appellant/2nd Respondent

vs.

1. P.Jayaraman

2. R.Lakshmi Narayanan

... 1st Respondent/Petitioner/
2nd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 20.07.2005 made in M.C.O.P.No.4176 of 1999 on the file of the Motor Accidents Claims Tribunal, (6th Judge, Court of Small Causes), Chennai.

For appellant	: M/s.R.Sree Vidhya
For respondent-1	: Mr.N.M.C.Babu
Respondent -2	: Exparte

JUDGMENT

This appeal arises out of the judgment and decree dated 20.07.2005 passed by the Motor Accidents Claims Tribunal, (6th Judge, Court of Small Causes), Chennai, (for brevity, "the Tribunal") in M.C.O.P.No.4176 of 1999.

2.The facts in a nutshell are as follows:

On the fateful day, i.e., on 09.02.1999, about 7.00pm, while the first respondent/claimant was riding his scooter bearing Regn.No.TN 07 F 6680 from North to South direction on the Kamaraj Salai, Chennai, another motor cycle bearing Regn.No.TN09 Z 9276 belonging to the second respondent and insured with the appellant insurance company, came from behind in a rash and negligent manner and hit the scooter. Due to the

said impact, the first respondent sustained grievous injuries. He filed a claim petition claiming a compensation of Rs.3,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,30,700/- with interest at 7.5%p.a. from the date of petition and fixed 75% liability on the appellant Insurance company. Aggrieved over the same, the appellant Insurance Company has preferred this appeal.

3.The learned counsel for the appellant Insurance company submitted that the first respondent/claimant was himself responsible for the accident, when he had skidded and fallen down from his scooter, whereas, the Tribunal has erred in apportioning the liability in the ratio of 25 : 75 between the first respondent/claimant and the owner of the motor cycle bearing Regn.No.TN09 Z 9276 which was insured with the appellant insurance company. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the first respondent/claimant submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference at the hands of this Court.

5.Heard the learned counsel on either side and carefully perused the records.

6.The first respondent/claimant has been examined as P.W.1. He deposed before the Tribunal that while he was proceeding in his scooter, the motor cycle bearing Regn.No. TN09 Z 9276 came from behind and hit him and the accident had occurred due to the rash and negligent riding of the rider of the motor cycle. P.W.2 stated in his evidence that while the first respondent/claimant was riding his scooter, he had skidded and fallen down and at that time, the motor cycle, which was coming from behind, ran over the leg of the first respondent/claimant; and the criminal case was lodged against the rider of the motor cycle bearing Regn.No.TN09 Z 9276, who subsequently, admitted his guilt and paid fine before the Criminal Court. His evidence was fortified by Ex.P22-FIR and Ex.P23-rough sketch. Even in Ex.P24-charge sheet, it was stated that the accident had occurred due to the negligent act on the part of the rider of the motor cycle. To rebut the same, there was no oral and documentary evidence on the side of the appellant Insurance Company. Though it was stated in the counter statement that the offending vehicle was not insured with the second respondent, the policy details mentioned in the claim petition was not denied on the part of the appellant insurance company during the course of enquiry before the Tribunal.

Considering all these aspects and also taking note of the fact that there was no mechanical defect and the insurance policy pertaining to the motor cycle was in force at the time of accident, the Tribunal, after having held that the accident had occurred due to the rash and negligent driving on the part of the rider of the motor cycle, observed that if the first respondent/claimant would have been diligent enough in riding his scooter, the accident might have been avoided and hence, he was also responsible for the accident to some extent. Having observed so, the Tribunal has rightly fixed 25% negligence on the part of the first respondent/claimant and 75% negligence on the part of the rider of the motor cycle insured with the appellant insurance company, which factual finding this Court is not inclined to interfere.

7.In respect of the quantum of compensation, P.W.1/first respondent/claimant deposed that he was drawing a salary of Rs.16,684/- per month by working as Assistant Manager in Syndicate Bank and Ex.P15 is the salary certificate; due to the injuries sustained in the accident, he was unable to attend work for a period of seven months. As per Ex.P16-leave certificate, he has taken leave for 186 days i.e., from 25.02.1999 to 10.08.1999, besides 16 days i.e., from 9.2.1999, the date on which the accident had occurred, to 25.02.1999 and the same would amply prove that the first respondent/claimant suffered from loss of earnings for a period of seven months, due to the accident. Thereafter, he joined the duty, but voluntarily retired from service on 28.04.2001. At the time of retirement, he was aged 48 years and his salary was Rs.18,500/- per month.

8.P.W.3/doctor deposed that in the accident, the first respondent/claimant sustained fracture in right femur bone, for which, plate was inserted, besides suffering from other fractures in leg and due to the same, he can walk with the help of clutches and he finds it difficult to walk, squat and sit; and he sustained 60% permanent disability. Ex.P5 is the disability certificate. Exs.P7, P9, P10, P11 and P12 are the medical bills in respect of the treatment taken by the first respondent/claimant. Placing reliance on those materials and evidence, the Tribunal has awarded the total compensation at Rs.5,30,700/- under the following heads:-

Sl. No.	Head	Amount awarded by the Tribunal
1	Transportation expenses	Rs. 10,000/-
2	Extra Nourishment	Rs. 10,000/-
3	Medical expenses	Rs. 90,700/-

Sl. No.	Head	Amount awarded by the Tribunal
4	Loss of income during treatment period	Rs. 1,20,000/-
5	Loss of income due to voluntary retirement	Rs. 2,00,000/-
6	Pain and suffering	Rs. 50,000/-
7	Permanent disability	Rs. 50,000/-
	Total	Rs. 5,30,700/-

The quantum so arrived, in the opinion of this Court, is fair, just and reasonable and the same cannot be said to be excessive and exorbitant at any stretch of imagination and hence, the same is hereby confirmed. There is no modification with regard to the rate of interest awarded by the Tribunal.

9. In such view of the matter, this Civil Miscellaneous Appeal stands dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

10. It is represented by the learned counsel for both sides that as directed by this Court, the appellant has already deposited the entire compensation as awarded by the Tribunal, along with interest and costs and the first respondent/claimant has also been permitted to withdraw 50% of the award amount. In view of the same, the Tribunal is directed to transfer the balance amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within a period of one week from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

Mra

To

1. The Judge,
Motor Accidents Claims Tribunal,
(6th Judge, Court of Small Causes), Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai 104.

+1cc to Ms.Sree Vidhya, Advocate, SR.No.69454.

+1cc to Mr.N.M.C.Babu, Advocate, SR.No.68363.

order in
C.M.A.No.1164 of 2006

MP(CO)
CSR: 04/02/2020