

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1282 of 2005

M.A.Mohamed Raffi

.. Appellant

Vs.

1.P.Sudhagar
2.Boovaragavan
3.The Divisional Manager,
New India Assurance Company Ltd.,
Pondicherry.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 11.10.2004 made in M.C.O.P.No.447 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court at Pondicherry.

For Appellant : Mr.T.Dhanyakumar

For Respondents: Mrs.R.Sreevidhya for R3

No appearance for RR1 & 2

JUDGMENT

The appellant is the claimant in M.C.O.P.No.447 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Pondicherry. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 18.12.2002.

2.The case of the claimant is that on 18.12.2002 at about 10.30 a.m., he was travelling as a pillion rider in a TVS-50 Moped bearing Reg.No.TN-32-A-1158 along G.S.T. Road, Villupuram and an IND Suzuki Motorcycle bearing Reg.No.PY-W-7977 belonging to the 1st respondent and insured with the 3rd respondent/Insurance Company ridden by its rider in a rash and negligent manner, hit the TVS-50 Moped motorcycle, as a result of which, he was thrown out and sustained injuries. According to the claimant, the rider of IND Suzuki Motorcycle bearing Reg.No.PY-W-7977 rode the two wheeler in a rash and negligent manner and caused the accident.

3.The first respondent (owner of the offending vehicle) remained absent before the Tribunal and therefore he was set exparte. The second and third respondents contested the claim petition. The Motor Accident Claims Tribunal, Principal District Judge, Pondicherry after analysing the evidence on record awarded a compensation of Rs.75,068/- with interest at the rate of 7.5% per annum and also held that the rider of the two wheeler in which the claimant was a pillion rider, was also rash and negligent in riding his vehicle and fixed composite negligence on the part of riders of both the two wheelers in the ratio 50:50. Not satisfied with the quantum of compensation awarded by the tribunal, the claimant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.The learned counsel appearing for the appellant contended that though Dr.R.V.Krishnakumar (PW3) assessed the partial permanent disability as 38%, the Tribunal has fixed the disability of the appellant as 20% and awarded a very meagre amount of Rs.75,068/- as compensation to the claimant, especially when the claimant has adduced sufficient records to show that he is entitled to compensation of Rs.5,00,000/- as claimed by him in the petition.

5.No appearance for the respondents 1 & 2.

6.Per contra, learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal after analysing the oral and documentary evidence adduced on both sides, awarded a sum of Rs.75,068/- as compensation to the claimant and also rightly fixed the composite negligence on the part of the riders of both the motor vehicles in the ratio 50:50 and prayed for dismissal of the appeal.

7.In the claim petition, it is contended by the claimant that his vehicle was hit by the IND Suzuki Motorcycle bearing Reg.No.PY-W-7977 from behind. On the contrary, the rider of the TVS 50 Moped, who was examined as PW2, deposed that the motorcycle bearing Reg.No.PY-W-7977, came on the opposite direction and hit his motorcycle. Considering the oral and documentary evidence, the Tribunal rightly fixed the composite negligence on the part of both the vehicles in the ratio 50:50 and there is no reason to interfere with the same.

8.As far as quantum of compensation is concerned, Dr.R.V.Krishnakumar (PW3) had assessed the partial permanent disability of the appellant as 38%. The disability certificate is also marked as Ex.A22. The claimant has sustained fracture on right humerus bone on account of the road accident. The various heads under which compensation awarded by the Tribunal is

extracted hereunder:

S. No.	Head	Amount granted
1.	For injuries	Rs.30,000/-
2.	Loss of earning	Rs.3,000/-
3.	Pain and suffering & Mental agony	Rs.10,000/-
4.	Future inconvenience	Rs.5,000/-
5.	Extra nourishment	Rs.2,000/-
6.	Medical expenses	Rs.25,068/-
Total		Rs.75,068/-

The Tribunal had considered all the aspects of the case and awarded a sum of Rs.75,068/- as compensation to the claimant and the same does not warrant interference by this Court. However, the Tribunal has awarded 9% interest per annum, which has to be reduced to 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The orders passed by the Tribunal is upheld.

(iii) The 3rd respondent / Insurance Company is directed to deposit 50% of the award amount i.e., Rs.37,534/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.447 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court at Pondicherry within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

mtl

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Pondicherry.

2.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.T.Dhanyakumar, Advocate sr 82036.

C.M.A.No.1282 of 2005

RV(CO)
SP(03/03/2020)