

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1684 of 2006

E.Muthukrishnan

Appellant / Petitioner

Vs

1. Thangappan

2. Smt.Kanmani

3. The Untied India Insurance Co Ltd
Thirupunithura
Ernakulam District
Kerala

4. Ragukumar

5. The Managing Director
Niradeepam Roller Flour Mills
Thuruthy Po
Chenganancherry
Kerala

6. The Oriental Insurance Company Ltd
Perunai
Chenganancherry
Kerala

Respondents / Respondents

(R1,R4,R5 and R6 are given up in the appeal as no relief is sought for against them)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 23.01.2006 passed in M.C.O.P.No.55 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Erode.

For Appellant : Mr.A.K.Kumaraswamy

For Respondents: For R3 - Mr.M.J.Vijayaraghavan
R2-Dismissed 22.2.16
R1,4,5&6-Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, as against the award passed by the Tribunal in M.C.O.P.No.55 of 2005 granting Rs.2,00,000/- as compensation.

2. The appellant herein is the claimant before the Tribunal. It is the case of the claimant /appellant herein that when he was under the employment with the 5th respondent, he met with an accident involving a vehicle (Tempo Van) driven by the 1st respondent, which was insured with the 3rd respondent herein.

3. Heard the learned counsel for the appellant / claimant and the learned counsel for the 3rd respondent.

4. It is the submission of the learned counsel for the appellant that the Tribunal having found that the accident had happened solely due to the rash and negligent driving of the 1st respondent has erred in granting a lesser compensation, which is not in consonance with the age and injuries sustained by the claimant. He further submitted that the Tribunal found through the evidence of doctors that the claimant / appellant has suffered 40% disability, ought to have awarded atleast some amount towards future medical expenses and pain & sufferings.

5. Per contra, the learned counsel for the 3rd respondent (Insurer) submitted that the Tribunal has fastened the liability only on the 3rd respondent herein, whereas the accident had happened involving two vehicles. He further submitted that the Tribunal has not appreciated the documents, First Information Report and Motor Vehicle Inspector's Report in a proper perspective.

6. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

7. At the outset, it is has to be pointed out that the Tribunal, after discussing in detail about the manner of the accident and nexus and the involvement of the vehicles in the respective places, has fastened the liability on the part of the driver of the 1st respondent herein. The Tribunal has also discussed about the evidence and documents produced by the respondents herein and has ultimately concluded that, it was because of the rash and negligent driving of the driver of the Tempo van, which was insured with the 3rd respondent herein, the

accident had happened. The First Information Report and the Motor Vehicle Inspector's Report clearly indicate that due to negligent driving on the part of the Tempo van, the accident had happened and there is no evidence or document is available controverting the same. Thus, this Court finds no reason to differ from the reasonings rendered by the Tribunal, since the same are based on evidence and documents available on record and thus the findings of the Tribunal on negligence is confirmed fastening the liability only on the part of the 3rd respondent herein.

8. As far as the quantum awarded by the Tribunal is concerned, though the Tribunal has taken into account the evidence of PWs 2 and 3, doctors, who have examined the claimant and issued Disability Certificate at the rate of 40%, has failed to award compensation towards pain and sufferings and future medical expenses. As against the claim made by the claimant for a sum of Rs.4,50,000/-, the Tribunal has awarded a sum of Rs.2,00,000/- as compensation. The evidence of doctors clearly indicate the following injuries upon the claimant

- i. Crush injury over the thigh portion (left leg of the claimant)
- ii. Cut injury on his leg, wherein bones were visible
- iii. Bones on the right leg totally broken and
- iv. Grievous injuries all over the body

In support of the above said injuries, Exs.P.7,10,14 and 15 have also been filed by the claimant / appellant herein, before the Tribunal. This Court is of the opinion that the Tribunal has not appreciated the evidence of doctors in a proper manner, since with the said injuries, the claimant is supposed to lead his entire life.

9. In such view of the matter, the Tribunal ought to have awarded some amounts towards future medical expenses and paid and sufferings. Hence, this Court is inclined to award a sum of Rs.1,00,000/- over and above the award passed by the Claims Tribunal under the heads, "pain and sufferings" and "future medical expenses" at Rs.75,000/- and Rs.25,000/- respectively.

10. In the result, this Civil Miscellaneous Appeal is allowed by enhancing the award amount from Rs.2,00,000/- to Rs.3,00,000/- payable with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of deposit. No costs. The 3rd Respondent Insurance Company shall deposit the entire compensation amount, enhanced by this Court, along with interests and costs, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being

made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant forthwith, through RTGS. It is needless to state that the appellant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Erode.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.59084
+1cc to Mr.M.J.Vijayaraghavan, Advocate sr.58963

C.M.A.No.1684 of 2006

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