

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.06.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.571 of 2004
and C.M.P.No.2855 of 2004

1. The Principal,
M/s. T.E.S.Hr.Secondary School,
Kammampalli Village & Post,
Krishnagiri Taluk,
Dharmapuri District.

2. Branch Manager,
National Insurance Company Ltd.,
Branch Office,
No.305, Bangalore Road,
Krishnagiri. ... Appellants/ Respondents 1&2

Vs.

M.Manjunathan ... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.10.2003 made in M.C.O.P.No.882 of 2002, on the file of the Motor Accidents Claims Tribunal, (Sub-Court), Krishnagiri.

For Appellants : Mr.D.Bhaskaran

JUDGMENT

This appeal arises out of the order and decree dated 14.10.2003 passed by the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri, in MCOP.No.882 of 2002.

2.The case in brief, is as follows:

On the fateful day, ie. on 07.05.2002 at about 06.00 pm, the respondent / claimant was proceeding as pillion rider along with one Murugan in TVS Suzuki Samurai bearing Registration No.KA 08-H-1227 from K.G.F. towards Malayandahalli Village. When they were nearing Varatanapल्ली Village at Bodiparai, an Omni bus bearing Registration No.TN29-U-0525 belonging to the first appellant and insured with the second appellant, came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the respondent sustained grievous injuries. Stating so, he filed a claim petition claiming a compensation of Rs.2,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation

of Rs.1,55,400/- with interest at the rate of 9% per annum from the date of petition. Challenging the same, both the insured and insurer of the offending bus have filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellants submitted that despite the fact that there was no material evidence to prove the accident, the Tribunal has erred in coming to the conclusion that the driver of the Omni bus was responsible for the accident. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced substantially.

4.Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Record of proceedings would disclose that the respondent is not ready in notice. Even though this appeal was admitted and a conditional order of stay was granted way back in the year 2004, the appellants have not taken proper steps to serve papers to the respondent, even at this length of time. However, considering the fact that the appeal is of the year 2004, this Court is inclined to proceed with this appeal on merits.

6.As regards the question on negligence, the respondent / claimant examined himself as P.W.1, who deposed in his evidence that only due to the rash and negligent driving of the driver of the Omni bus, the accident had occurred. As per Ex.P1- First Information Report, the Omni bus driver drove the vehicle in a rash and negligent manner and dashed against the motorcycle and hence, he was subjected to criminal proceedings. On the other hand, it was contended on the side of the appellants that in the absence of any concrete material to prove the manner of accident, the Tribunal ought to have fixed the negligence on the drivers of both the vehicles and apportioned the liability equally. However, neither oral nor documentary evidence was adduced to substantiate their contention. In the absence of any contra evidence, the Tribunal placing reliance on the evidence of P.W.1 and Ex.P1 FIR, has rightly come to the conclusion that the driver of Omni bus was responsible for the accident and accordingly, directed the second appellant/insurer of the Omni bus to pay compensation, which this Court is not inclined to interfere.

7.With regard to the quantum of compensation awarded by the Tribunal, the respondent/claimant/P.W.1 has stated in his evidence that he was 28 years old and was earning a sum of Rs.5000/- per month as doing painting work and driving auto. He further deposed that in the accident, he sustained contusion and abrasion in right leg, contusion in the right ankle and backside of the head and abrasion over the left knee, left ankle and left elbow; and he was initially treated in the Government Hospital,

Krishnagiri and at Bangalore, St.John's Hospital as inpatient for a period of fifteen days. The evidence of P.W.1 was corroborated by P.W.2/Doctor, who examined the claimant and issued Ex.P4-disability certificate to the tune of 35%. Ex.P2- wound certificate and Ex.P5-X-ray were also supported the case of the respondent/claimant with regard to the injuries. After considering those materials and evidence, the Tribunal has taken the monthly income of the respondent/claimant at Rs.3,000/- and permanent disability at 20%, adopted the multiplier of 17 and quantified the compensation under the head "loss of income due to disability" at Rs.1,22,400/- (36,000/- x 17 x 20/100). In the opinion of this Court, the Tribunal has rightly determined the income, adopted the multiplier and assessed the compensation under this head and hence, the same does not require any interference.

8.That apart, the Tribunal has awarded Rs.25,000/- towards grievous injuries, Rs.5,000/- towards pain and suffering and Rs.3,000/- towards extra nourishment, which are fair, just and reasonable and the same cannot be said to be excessive and exorbitant at any stretch of imagination, considering the nature of the injuries sustained by the respondent/claimant and in the given facts and circumstances of the case and hence, the same do not require any interference by this Court.

9.In fine, this Civil Miscellaneous Appeal is dismissed. No costs. The second appellant Insurance Company is directed to deposit the entire award amount with interest 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 Judgement. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the respondent/claimant through RTGS, within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
The Sub-Judge, Krishnagiri.

2.The Section Officer, VR Section, Madras High Court.

+lcc to Mr.D.Bhaskaran , Advocate SR.No. 49828

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A.SK(12/02/2020)