

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.1218 OF 2008

P.Venkatesan

...Appellant/Claimant

Vs.

1. P.S.Venkatesan

2. The New India Assurance Co. Ltd.
No.45, Moore Street, 5th Floor,
Chennai 600 001

...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated, 26.10.2007 in M.C.O.P. No.4316 of 2002 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes) at Chennai.

For Appellant : Mrs. Ramya V.Rao

For Respondents : Mrs.R.Srividhya for R2.
R1 - No appearance

JUDGMENT

The appellant is the claimant in M.C.O.P. No.4316 of 2002 on the file of the IV Judge, Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 03.11.2000.

2. According to the appellant / claimant, on 03.11.2000, he was travelling as a pillion rider in a Motor cycle bearing registration No. TN-09-B-5623 along old Mahabalipuram Road and that when he was nearing Kolkarmaal Village, at about 20.30 hours, the rider of the motor cycle rode the vehicle rashly and negligently and hit a lorry, as a result of which, he sustained injuries all over his body. His further contention is that the

rash and negligent riding of the rider of the two wheeler bearing registration No. TN-09-B-5623 was the cause of the accident and that since the said vehicle was insured with the second respondent / The New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation of Rs.5,00,000/- to him.

3. The owner of the two wheeler, remained absent before the tribunal and therefore, he was set exparte. The second respondent/ The New India Assurance Company Limited contested the claim petition.

4. The learned IV Judge, Court of Small Causes, Chennai, dismissed the claim petition contending that the appellant / claimant did not prove negligence on the part of the rider of the two wheeler. Aggrieved over the orders passed by the tribunal, the appellant / claimant has filed this present appeal.

5. Mrs. Ramya V. Rao, learned counsel appearing for the appellant would contend that even in the FIR (Ex.P6), the factum of accident alone was mentioned and that the tribunal has wrongly dismissed the entire claim petition stating that the appellant / claimant did not prove negligence on the part of the rider of the two wheeler.

6. per contra, Mrs. Srividhya, the learned counsel appearing for the New India Assurance Company Limited, contended that there is a delay in lodging a complaint with the police and that even as per the versions of the claim petition, only a lorry was at fault and therefore, the tribunal rightly dismissed the entire claim petition. Her specific contention is that in the facts and circumstances of the present case, this Court need not interfere with the findings recorded by the tribunal.

7. In the decision in Bimla Devi and Others Vs. Himachal Road Transport Corporation and others reported in (2009) 13 Supreme Court Cases 530, relied on by the learned counsel appearing for appellant, it is held that strict proof of the accident may not be possible to be given by the claimants and that the claimants have to establish their case on preponderance of probability. It is further held that the standard of proof beyond reasonable doubt is not necessary as far as the motor accidents cases are concerned.

8. In the instant case, the appellant / claimant examined himself as P.W.1 and he has clearly spoken about the manner of accident that took place on 03.11.2000. No contra evidence was adduced on the side of the second respondent / The New India Assurance Company Limited. In fact, the owner of the two

wheeler / first respondent did not appear before the tribunal and he was set exparte. In the decision in Khenyei Vs. New India Assurance Co. Ltd., and others reported in 2015 (4) MLJ 364 relied upon by the learned counsel for the appellant, it is held that when there are two tort feasons, the claimant is permitted to proceed against with one tort feason. P.W.1 in his evidence before the tribunal has categorically deposed that the rider of the two wheeler stopped his vehicle on seeing another lorry coming on the opposite direction with dazzling lights and that a speeding lorry hit the two wheeler from behind, as a result of which, both of them fell down. In the circumstance, the entire negligence cannot be fixed on the driver of the lorry and therefore, I hold that the rider of the two wheeler was also at fault.

9. As far as the quantum of compensation is concerned, the appellant claimant has sustained compound fracture of both bones in right leg as per the medical records Ex.P1, Ex.P2 and Ex.P3 and Dr.Saichandran (P.W.2) has assessed the partial permanent disability as 40%. The appellant / claimant was working as a Manager in Indian Overseas Bank and it cannot be said that he was unable to attend to his work subsequently on account of the accident. Therefore, adopting multiplier method is not warranted as far as the present case is concerned. To meet the ends of justice, a sum of Rs.40,000/- is awarded towards loss of earning capacity, by fixing Rs.1,000/- per percentage for partial permanent disability. Apart from the above amount, a sum of Rs.10,000/-, Rs.10,000/- and Rs.10,000/- is awarded towards transportation, extra nourishment and attender's charges respectively. The appellant / claimant has produced medical bills to the tune of Rs.1,26,000/-. Since a sum of Rs.75,000/- was reimbursed from Indian Overseas Bank for whom he was employed, balance amount of Rs.51,000/- towards medical bills and Rs.6,750/- towards physiotherapy charges can be awarded to the claimant. A perusal of the record shows that the appellant / claimant was admitted three times as an inpatient in MIOT Hospital, Chennai. Therefore, a sum of Rs.25,000/- is awarded towards pain and sufferings and a sum of Rs.10,000/- is awarded towards loss of amenities. Hence, the appellant/claimant is entitled to the following amount as extracted hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Loss of earning capacity	40,000/-
2.	Transportation	10,000/-
3.	Extra nourishment	10,000/-
4.	Medical expenses	51,000/-

S.No.	Head	Amount granted (Rs.)
5.	Physiotherapy charges	6,750/-
6.	Attender charges	10,000/-
7.	Pain and sufferings	20,000/-
8.	Loss of Amenities	10,000/-
9.	Damage to clothes	1,000/-
Total		1,58,750/-

10. In the result,

(i) The appeal is allowed. No costs.

(ii) The award passed by the IV Judge, Court of Small Causes, Motor Accidents Claim Tribunal, Chennai, dated 26.10.2007, dismissing the claim petition in M.C.O.P. No.4316 of 2002 is set aside.

(iii) The Second respondent / The New India Assurance Company Limited is directed to pay a compensation of Rs.1,58,750/- (Rupees One lakhs Fifty Eight Thousand Seven Hundred and Fifty) to the appellant / claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) On such deposit being made by the second respondent, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

To

IV Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai

Copy To
The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+2cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.1573
+1cc to Mrs.R.Srividhya, Advocate, S.R.No.2463

C.M.A.NO.1218 OF 2008

SV (CO)
CS/15/04/2019