

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3786 of 2005

Ravikumar ...Appellant/Petitioner
.Vs.

1.Subramaniam
2.Velan Transport,
149, 9th street,
Gandhipuram,
Coimbatore.

3.The United India Insurance Co. Ltd,
BOB Buildings,
Bank road,
Coimbatore.

... Respondents

R1 is given up as remained exparte in trial Court

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.11.2004 passed in MCOP.No.1111 of 2001 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.1), Coimbatore.

For Appellant : Mr.AR.M.Arunachalam

For Respondents : Mr.C.Paranthaman for R3
No appearance

R1 : Exparte before the tribunal

JUDGMENT

The appellant is the claimant in MCOP.No.1111 of 2001 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.1), Coimbatore. He filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 05.07.2000.

2. The case of the claimant is that on 05.07.2000, when he was travelling as a pillion rider in a motorcycle bearing Registration No. TN 37 E 1583 on Coimbatore - Pollachi main road, a bus bearing Registration No. TN 38 K 3773 belonging to the second respondent and driven by the first respondent came with a high speed and hit the motorcycle in

which he was travelling, as a result of which, he fell down and sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the second respondent was the cause of the accident and that since the second respondent's vehicle was insured with the third respondent, the United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

3. The driver of the bus (first respondent) remained absent before tribunal and therefore, he was set exparte. The second and third respondents contested the claim petition. The learned Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.1), Coimbatore after analysing the evidence on record awarded a compensation of Rs.1,14,000/- to the claimant, after deducting 50% towards contributory negligence on the part of the rider of the motorcycle bearing Registration No. TN 37 E 1583, in which the claimant was travelling as a pillion rider. Therefore, the respondents 2 and 3 were directed to pay a sum of Rs.57,000/- to the claimant together with interest at the rate of 9% per annum. Aggrieved over the orders passed by the tribunal, the claimant has filed the present appeal.

4. Mr.AR.M.Arunachalam, learned counsel appearing for the appellant / claimant contended that the tribunal was wrong in reducing the award amount by 50%, citing contributory negligence on the part of the rider of the motorcycle bearing Registration No. TN 37 E 1583, merely because three persons were seated on the motorcycle. He also relied on the decision of the Division Bench of this Court in Kattabomman Transport Corporation Limited, represented by its Managing Director, Vannarpettai, Tirunelveli vs. Vellai Duraichi and others reported in 2004 (1) CTC 677 and contended that mere violation of provisions of the Act or Rules which prescribes maximum of two riders in two wheeler would not be a ground for reduction in compensation amount. In the said decision, it has been held thus:

"8. In the light of the said conclusion, we have carefully verified the factual details and the ultimate decision arrived at in the first Division Bench decision, namely, Tamil Nadu State Transport Corporation, Coimbatore Division v. Abdul Salam (cited supra). As observed earlier, except stating that 3 persons travelled in a motor vehicle, which is prohibited, no specific finding was given to the effect that travelling of three persons in a motor cycle was responsible for the accident; hence we are of the view that the conclusion in 2003 (1) M.L.J. 489 is to be confined to that case. In other words, merely because there is violation of the provisions of

the Act or Rules or the policy conditions, it is not automatic that in every case the principle of contributory negligence is to be applied mechanically. As rightly observed in the other Division Bench decision, namely, *M.Anandavalli Amma v. Arvind Eye Hospital*, 2002 (3) L.W. 710, unless there is evidence to prove that the accident took place only because of such act that is taking/travelling more persons in a motor cycle which resulted in an accident, the owner of the other vehicle and its insurer will be liable to pay compensation. To put it clear, if the appellant-Transport Corporation is able to prove that it is because of the addition of one more (third person in the motor cycle instead of two), the accident occurred, the position would be different. In other words, unless the owner of the vehicle or the Insurance Company is able to prove that the accident took place only because of such act that is taking more persons than the prescribed number, the owner/Insurance Company will be liable to make good the loss/compensation. In the case on hand the materials placed before the Tribunal show that it was the bus driver who had gone to the other side of the road, hit the motor cycle thereby caused the accident. There is no evidence to show that the accident occurred because of travelling of three persons in the motor cycle. In the light of the above said conclusion, we reject the contra argument made by the learned counsel for the appellant."

5. In the instance case, there is no evidence to prove that the accident took place only because three persons were travelling in the motorcycle bearing Registration No. TN 37 E 1583. In fact, the driver of the bus bearing Registration No. TN 38 K 3773 remained absent before the tribunal and he was set *exparte*. Neither the owner of the said bus nor the Insurance Company was able to prove that the accident took place only because of violations of provisions of Act or Rules by the motorcyclist and therefore, the tribunal is wrong in reducing the compensation amount by 50%. The decision rendered by the Division Bench of this Court squarely applies to the facts of the present case and therefore the appeal is allowed.

6. In the result,

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

(ii) The orders passed by the tribunal deducting 50% of the compensation amount towards contributory negligence on the part of the rider of the motorcycle bearing Registration No. TN 37 E 1583 is alone set aside. Therefore, the claimant is entitled to a compensation of Rs.1,14,000/- together with interest at the rate of 9% per annum.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second and third respondents are jointly and severally liable to pay the compensation of Rs.1,14,000/- (less the amount already deposited) together with interest at the rate of 9 % per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 1111 of 2001 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.1), Coimbatore within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Additional District Court,
Fast Track Court No.1,
Coimbatore.

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

+1cc to Mr.AR.M.Arunachalam, Advocate SR.No.76652

+1cc to Mr.C.Paranthaman, Advocate SR.No.76590

CMA.No.3786 of 2005

RV (CO)
GM (19/02/2020)