

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1671 of 2009

A.Palanisamy

.. Appellant /Petitioner

vs

1.E.Thiyagarajan

2.K.Dhanasekaran @ Babu

3.The Branch Manager,

The United India Insurance Co. Ltd.,
Salem.

..Respondents/Respondent

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.07.2008 passed in MCOP.No.340 of 2006 on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondents : Mrs.R.Srividhya for R3

No appearance for R2

R1 vacated.

JUDGMENT

The appellant is the claimant in MCOP.No.340 of 2006 on the file of the Principal Sub Court / Motor Accidents Claims Tribunal, Erode. He filed the claim petition under Section 166 of the Motor Vehicles Act seeking for a compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 13.03.2006.

2. The case of the claimant is that on 13.03.2006, at about 03.00 a.m, when he was riding his Bajaj PYK motor cycle bearing Registration No.TN-33-AA-8569 with his son Kumar as pillion rider along Erode-Chithode Road, a speeding Ambassador Car bearing Registration No.TN-27-F-3876 belonging to the 1st respondent and insured with the 2nd respondent hit the two-wheeler, as a result of which, the petitioner and his son were thrown out from the motorcycle and both of them sustained multiple grievous injuries.

3. According to the claimant, the rash and negligent

driving of the driver of the Ambassador Car (first respondent) bearing Registration No.TN 27 F 3876 belonging to the second respondent was the cause of the accident and that since, the owner of the Ambassador Car (second respondent) had insured the vehicle with the 3rd respondent / United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

4. The first and second respondents remained absent before the Tribunal and therefore, they were set *exparte*. The third respondent, United India Insurance Company Limited contested claim petition on all the grounds available to the insured. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, after analysing the evidence on record held that

i) the claimant is entitled for a compensation of Rs.76,905/- together with interest at the rate of 8% per annum from the date of claim petition till the date of decree and thereafter, at the rate of 6% per annum from the date of decree till the date of realization;

ii) Since the rider of the motorcycle was also responsible for the accident, 25% of the compensation amount to be reduced for contributory negligence and the 2nd and 3rd respondents are jointly and severally liable to pay 75% of the compensation amount;

Iii) the 3rd respondent can recover 25% of the Award amount from the 2nd respondent since his driver was also at fault. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal.

5. Mr.N.Manokaran, learned counsel appearing for the appellant / claimant would contend that though the doctor (PW2) had assessed the partial permanent disability at 22%, the Tribunal had reduced the same to 10% without any valid reasons and that it awarded a very meagre amount of Rs.76,905/- especially when the claimant has sustained head injury and also fracture of right temporal bone. He, therefore, prayed for enhancement of compensation. His next contention is that though the final report was filed against the driver (1st respondent) of the 2nd respondent, the Tribunal had wrongly fixed the contributory negligence on the part of the rider of the motor cycle.

6. Per contra, Mrs.R.Srividhya, learned counsel appearing for the 3rd respondent would contend that the Tribunal, after taking into account all the aspects of the case had awarded a

just compensation of Rs.76,905/- and the same need not be disturbed at this stage.

7. The Tribunal had fixed the contributory negligence on the part of the rider of the motorcycle merely on the ground that the claimant did not examine his son who was also travelling in the same motorcycle as a pillion rider. In the instant case, the claimant had clearly deposed that the driver of the Ambassador car was rash and negligent in driving his vehicle. The Sub Inspector of Police, Erode North Police Station, after completing the investigation had laid a charge sheet against the driver of the Ambassador car for the offences punishable under Sections 279 and 338 of Indian Penal Code before the Judicial Magistrate No.I, Erode. Though the Criminal Court records are not binding on the Tribunal, yet they cannot be thrown out in entirety. As already observed, the Tribunal had fixed the contributory negligence on the rider of the motorcycle because he did not examine his son who was a pillion rider. Such an observation made by the Tribunal cannot be sustained since the claimant has produced sufficient records to show that the driver of the Ambassador car alone was responsible for the accident. Therefore, the order of the Tribunal fixing contributory negligence on the part of the claimant is set aside.

8. Dr.Sengottian, (PW2) had assessed the partial permanent disability at 22%, however, the Tribunal reduced it by 10%. A perusal of the discharge summary (Ex.P10) shows that the claimant has sustained the following injuries:

- Head Injuries
- Parietal Extradural Haematoma
 - (L) Temporal Lobe Contusion
- Fracture of ® Temporal Bone

9. It is contended by the claimant that he was working in Sastha Bleaching Factory, Erode, as a daily coolie, earning a sum of Rs.2000/- per week and the salary certificate is also marked as Ex.P11. Considering the same, the monthly income of the claimant is fixed as Rs.8000/-. On account of the accident, the claimant could not have been in a position to attend to his regular work and therefore, a sum of Rs.24,000/- (Rs.8000 x 3) is awarded towards loss of income. Since there is no functional disability, a sum of Rs.2000/- is awarded per percentage of disability. The award passed by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.24,000/- (Rs.8,000/- x 3 months)
2.	Partial Permanent disability	Rs.44,000/-
3.	Pain and sufferings	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.1,000/-
8.	Medical Bills	Rs.43,640/-
Total		Rs.1,34,640/-

Thus, the compensation awarded by the Tribunal in MCOP.No.340 of 2006 is enhanced from Rs.76,905/- to Rs.1,34,640/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.76,905/- to Rs.1,34,640/-.

(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 United India Insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.1,34,640/- (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 MCOP.No.340 of 2006 on the file of the Motor Accidents Claims Tribunal/ Principal Sub Judge, Erode, 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-V)

//True Copy//

Sub Assistant Registrar

Uma

To

The Motor Accidents Claims Tribunal,
The Principal Sub Court, Erode.

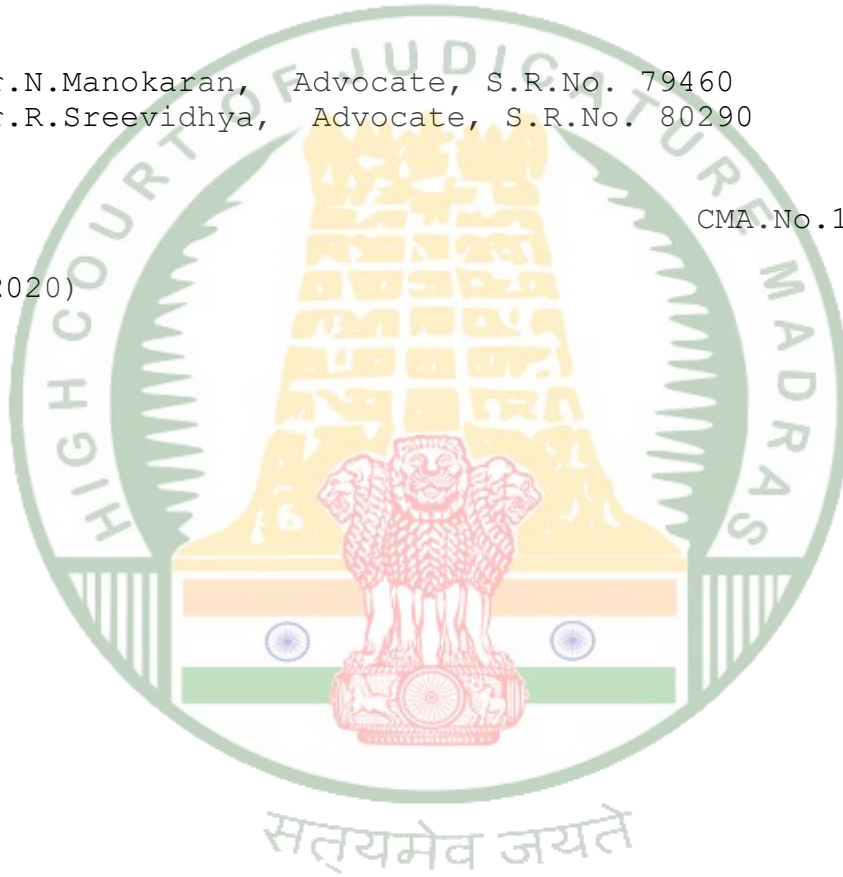
Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 79460
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 80290

CMA.No.1671 of 2009

BS (CO)
GN(29/06/2020)



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