

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.210 of 2010

S.Sivakumar

...Appellant/Claimant

vs.

1.M.Govindaraju

2.E.Thangavel

3.M/s.United India Insurance Co. Ltd.,

Divisional Officer,

12, Dr.Sankaran Road,

Namakkal - 637 001.

...Respondents/Respondents

(Policy No.170900/31/06/01/00007015)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 17.08.2009 passed in MCOP.No.763 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.1, Erode.

Appellant : Mr.K.Govi Ganesan

R1 and R3 : No appearance

R2 : Mrs.I.Malar

JUDGMENT

The appellant is the claimant in MCOP.No.763 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.1, Erode. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident on 04.09.2007.

2. The case of the claimant is that on 04.09.2007, he was riding his TVS 50 bearing Registration No. TN 33 Q 2827 on Erode - Sathy Road and at about 01.00 p.m, a speeding lorry bearing Registration No. TN 28 AB 2586, hit his two wheeler, as a result whereof, he fell down and sustained injuries all over his body.

3. According to the claimant, the rash and negligent driving of the driver of the lorry belonging to the second respondent was the cause of the accident and that since the said lorry was insured with the third respondent, United India Insurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The owner and the driver of the lorry remained absent before the Tribunal and therefore, they were set ex-parte. The third respondent, United India Insurance Company Limited contested claim petition on all the grounds available to the insured. The learned Additional District Judge / Motor Accidents Claims Tribunal, Fast Track Court No.1, Erode while awarding compensation of Rs.1,09,000/- together with interest at the rate of 7.5% per annum to the claimant, fixed contributory negligence on the part of the claimant to the extent 50%. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.K.Govi Ganesan, learned counsel appearing for the appellant contended that when the First Information Report and the final report clearly show that the driver of the lorry was responsible for the accident, the Tribunal, based on the Motor Vehicles Inspector's Report had concluded that the claimant was also responsible for the accident. He also drew the attention of this Court to the claim petition and the evidence of P.W.1, wherein the sequence of events are narrated by the claimant. According to him, the Tribunal without considering the oral and documentary evidence adduced on the side of the claimant had erroneously fixed the contributory negligence on the part of the claimant to the extent 50%. He therefore prayed for setting aside the order passed by the Tribunal in this regard.

6. Per contra, learned counsel appearing for the Insurance Company contended that since the accident took place on the middle of the road, as evidenced by a copy of rough sketch (Ex.R3), the Tribunal was right in fixing 50% contributory negligence on the part of the claimant.

7. A perusal of the records shows that the Sub Inspector of Police, Erode North Police Station registered First Information Report against the driver of the lorry and after full investigation laid a final report against the driver of the lorry. The Tribunal mainly relying on the Motor Vehicles Inspector's Report, held that this is a case of head on collision between two vehicles. The Insurance Company in their counter, contended that the claimant who was riding TVS 50 XL suddenly took 'U' turn very close to the lorry, thus making it impossible for the driver of the lorry to avoid the accident. However, no evidence was adduced by them to

substantiate their contention in this regard. A driver of a heavy motor vehicle should be very careful while driving his vehicle. He must see on all the sides of the road and he is under obligation to avoid injuring someone or placing him in the path of danger. There is absolutely no evidence to show that the driver of the lorry took all the reasonable precautions while driving his vehicle. In the absence of evidence on the side of the Insurance Company, it has to be concluded that the driver of the lorry was rash and negligent and therefore contributory negligence fixed on the part of the claimant to the extent 50% is liable to be set aside.

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The third respondent / United India Insurance Company Limited is directed to deposit the Award amount i.e., Rs.1,09,000/- (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.763 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.1, Erode within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

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

+1cc to Mr.K.Govi Ganesan, Advocate SR.96764
+1cc to Mr.T.Ravichandran, Advocate SR.96853

CMA.No.210 of 2010

RSV(CO)
CB(10/09/2020)