

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.1986 of 2009

K.Sekar ... Appellant/Petitioner/Claimant

Vs.

1. A.Rajendran

2. The Branch Manager,
The New India Assurance Company Ltd.,
1380, Amman Complex, EVN Road,
Erode.

3. S. Chandran

4. The Branch Manager,
The United India Insurance Company Ltd.,
C-1, First Main Road, I Floor,
Anna Nagar, Chennai-102. ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 19.09.2008 passed in MCOP No.285 of 2007 by the First Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.1, Erode.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.S.Elveera Ravindran (for R2)
Mr.S.Arunkumar (for R4)

No appearance for R1 and R3

WEB COPY
JUDGMENT

The appellant is the claimant in MCOP No.285 of 2007 on the file of the Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.1, Erode.

2. The appellant/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident that took place on 13.11.2006.

3. The case of the claimant is that on 13.11.2006 at about 8.15 a.m. he was driving his auto bearing registration No.TME-1728 and he was proceeding towards Railway Station, Erode and when he was nearing Government Quarters, a speeding van bearing registration No.TN-55-A-4505 belonging to the first respondent and insured with the 2nd respondent suddenly turned on the right hand side, without any signals, as a result of which, there was a collusion between the auto and the van and the claimant sustained injuries. According to the claimant, the rash and negligent driving of the driver of the van was the cause of accident and that since the owner of the van(first respondent) insured his vehicle with the 2nd respondent, New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

4. The owner of the auto bearing registration No.TM-E-1728 and his insurer are shown as Respondents 3 and 4.

5. The Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.1, Erode, after analysing the evidence on record, awarded a compensation of Rs.62,000/- together with interest at the rate of 7.5% per Annum to the claimants. However, the Tribunal had fixed contributory negligence on the part of the driver of the auto (claimant) at 50% and directed the 2nd respondent, The New India Assurance Company Limited to pay a sum of Rs.31,000/- together with interest at the rate of 7.5% per annum to the claimant. The claim petition as regards the 3rd and 4th respondents were dismissed. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal.

6. Mr.N.Manokaran, learned counsel appearing for the claimant contended that when the First Information Report and the Final Report were filed against the driver of the van bearing registration No.TN55-A-4505, the Tribunal without any basis had fixed the contributory negligence on the part of the driver of the auto (claimant) and that too at 50%. He would further contend that the compensation awarded passed by the Tribunal is very meagre and therefore, he also prayed for enhancement of compensation.

7. Per contra, Mr.Elveera Ravindran, learned counsel appearing for the 2nd respondent contended that the Tribunal after taking into account the damage of both the vehicles, had rightly concluded that the driver of the auto was also equally responsible for the accident and therefore, fixed contributory negligence on the part of the driver of the auto. He therefore contended that the orders passed by the Tribunal fixing contributory negligence on the part of the driver of the auto by 50% is perfectly right and hence prayed for dismissal of the appeal.

8. It is pertinent to point out that the Sub
<https://hcservices.ecourts.gov.in/hcservices/> Inspector of Police, Erode Town police station, after full

investigation, had filed a final report (Ex.P6) before the Judicial Magistrate-II, Erode, against the driver of the van bearing registration No.TN-55-A-4505 for the offences punishable under Sections 279, 338 of the Indian Penal Code.

9. A perusal of the first information report and the final report clearly shows that the driver of the van was the wrong doer. Though criminal records are not binding on the Motor Accident Claims Tribunal, the same cannot be thrown out in entirety. The Tribunal had come to the conclusion that the driver of the auto was also responsible for the accident merely on the basis of that the front side of the auto and rear side of the van got damaged. Such an observation made by the Tribunal cannot be said to be right, especially, when the claimant had adduced oral and documentary evidence to show that the driver of the van alone was responsible for the accident. Therefore, I hold that the Tribunal was not right in fixing contributory negligence on the part of the driver of the auto.

10. As regards the quantum of compensation is concerned, the claimant had sustained fracture of both the bones of his left leg. Dr.K.periyasamy (PW2) has assessed partial permanent disability of the claimant as 20%. Since the accident took place in the year 2006, Rs.2000/- is awarded per percentage of disability. It is also to be noted that there is no functional disability warranting multiplier method. Accordingly a sum of Rs.40,000/- (2000x20) is awarded towards "partial permanent disability". It is contended that the claimant was a driver by profession and was earning a sum of Rs.6,000/- per month. However, no proof is filed with regard to the income of the claimant. Hence, notional income of the claimant is fixed at Rs.4,500/- considering the fact that the accident took place in the year 2006. On account of the accident, the claimant definitely would not have been in a position to attend to his work for three months. Hence loss of income is calculated at Rs.13,500/- (4500 x 3). Apart from the above amounts, the claimant is also entitled to the following amounts.

Sl.No	Heads	Amount
1	Partial permanent disability (2000x20)	40,000
2	Loss of income (4500 x 3)	13,500
3	Pain and sufferings	20,000
4	Extra nourishment	5,000
5	Transportation	5,000
6	Attender's charges	2,000
7	Medical bills	20,500
	Total	1,06,000

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(i) The civil miscellaneous appeal is allowed. No costs.

(ii) The orders passed by Tribunal fixing contributory negligence on the part of the claimant (driver of the auto) is set aside and the compensation awarded by the Tribunal is enhanced from Rs.62,000 to Rs.1,06,000/-

(iv) The 2nd respondent, the New India Assurance Company Limited is directed to deposit the revised compensation amount of Rs.1,06,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them) within 4 weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the 2nd respondent, The New India Assurance Company Limited, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

mst

To

1. Additional District Judge/ Motor Accident Claims Tribunal,
Fast Track Court No.1, Erode.
2. The Branch Manager,
The New India Assurance Company Ltd.,
1380, Amman Complex, EVN Road,
Erode.

+1cc to Mr.N.Manokaran, Advocate SR.No.80405

+1cc to Mr.S.Arunkumar, Advocate SR.No.80328

+1cc to Mrs.Elveera Ravindran, Advocate SR.No.80163

CMA.No.1986 of 2009

KK(CO)
GMY(21/05/2020)