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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CMA No.2547 of 2010

Iyyappan : Appellant/Petitioner

Vs.

1.R.Padma

2.The Divisional Manger,
The New India Assurance Company Limited,
CSI Complex,
Officer's Line Road,
Vellore-1. : Respondents/Respondents

(R1 was set exparte before the Tribunal
and hence notice may be dispense with)

Prayer: Civil Miscellaneous Appeal filed under Section
173 of the Motor Vehicles Act against the Judgment and Decree
dated 04.08.2009 made in MCOP No.180 of 2008 on the file of
the Motor Accident Claims Tribunal/Chief Judicial Magistrate,
Vellore.

For Appellant : Mr.C.Prabakaran

For R1 : R1 Exparte before the Tribunal

For 2nd Respondent : Ms. R.Sreevidhya

J U D G M E N T

Challenging the Judgment and Decree passed by the
Motor Accidents Claims Tribunal/Chief Judicial Magistrate,
Vellore, in MCOP No.180 of 2008, dated 04.08.2009, the
claimant has filed this appeal, seeking compensation.

2.Brief facts of the case are that on 16/01/2008 at
about 3. pm, at Augaram Cheri Bus Stop in M.C Road, a bus
bearing Registration No.TN-23-E-1222 was stopped at Bus stop,
while the claimant was got down from the bus, at that time,
the bus drive move the bus without the conductor signal and
due to it, the claimant fell down from the bus and sustained
grievous injured on his hip and all over his body and
thereafter, he was admitted in the Government Hospital,
Vellore. A criminal case was registered against the driver of
the bus in Pallikonda Police Station in Crime No.21/2008 under



Sections 279 and 338 IPC. Contending that the driver of the bus was responsible for the accident, a petition was laid claiming compensation of Rs.5,00,000/-.

3. Resisting the claim, the 2nd Respondent Insurance Company filed counter affidavit, contending that the claimant had invited the accident and therefore, the 2nd Respondent Insurance Company is not liable to pay compensation.

4. The claimant examined himself as PW1 and examined Dr. Shanmugasundaram as PW2 and marked Exs.P1 to P5. On the side of the 2nd Respondent, one Babu was examined as RW1, but they have not chosen to mark any document.

5. The Tribunal after considering the evidence adduced on both side and materials available on record held that the claimant has not proved the negligence on the driver of the bus and dismissed the claim petition filed by the claimant. Challenging the judgment and decree of the tribunal, the present appeal has been filed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The learned counsel for the appellant/claimant submitted that the claimant has proved that the driver of the bus was responsible for the accident, however the Tribunal has erred in rejecting his evidence on the only ground that the accident had taken place when the claimant was trying to get down from the bus and the tribunal has failed to consider the evidence of PW1 and PW2 and the documents Exs.P1 to P5 and the tribunal erred in holding the entire negligence on the part of the injured because he was tried to get down from the running bus.

8. Per contra, the learned counsel for the 1st respondent made submissions in support of the finding given by the Tribunal.

9. In the case on hand, the learned Chief Judicial Magistrate has rejected the case of the claimant on the only ground that he has not proved the negligence on the driver of the bus. However, this court is of the view that the claim petition filed against the 2nd respondent is maintainable, since the claimant had sustained injury in the alleged accident.

10. The claimant has given evidence stating that he was a fruit and vegetable vendor and earned Rs.4,000/- per month and after the accident, he was admitted in the Government Hospital, Vellore as inpatient for about 5 days. PW1 deposed that at the time of accident, the bus stopped in the Bus Stop while he was got down from the bus, at that time, the driver



of the bus suddenly moved the bus without the conductor signal and hence, he fell down and sustained injuries. The claimant has produced Ex.P5 Wound Certificate. PW2 Doctor had examined the claimant and after perusing the medical records has issued Ex.P5-Disability Certificate stating that the claimant had sustained 35% disability. Exs.P5 and the evidence of PW2 Doctor would establish that the claimant had sustained 35% permanent disability. However, the Tribunal has totally rejected the case of the claimant and fastened the entire negligence on the side of the claimant. It is not in dispute that the accident occurred on 16.01.2008 at about 15.00 hours and the claimant had sustained injured in the alleged accident. RW1 admitted in his evidence that the claimant was injured due to the accident occurred on 16.01.2008.

11.It is the main contention of the appellant/claimant that even though, the tribunal has fastened the entire negligence on the side of the claimant, he seeks indulgence of this court to award compensation to some extent by fixing 50% negligence on the side of the claimant.

12.The learned counsel appearing for the 2nd respondent Insurance fairly conceded that if the court feels, some amount may be awarded to the claimant since the claimant has suffered 35% disability in the alleged accident took place on 16.01.2008.

13.Considering the facts and circumstances of the case and also considering the submissions made by either counsel, this court finds that contributory negligence has to be fixed both on the driver of the bus and the injured claimant in the ratio of 50:50. As per the decision of this court reported in 2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G.Ramesh), this court awards Rs.1,05,000/- towards permanent disability, by applying Rs.3,000/- per Percentage for 35%. Considering the nature of injury and the period of treatment, Rs.5,000/- towards pain and suffering, Rs.2,500/- towards transportation, Rs.2,500/- towards towards extra nourishment and Rs.3,500/- towards attending charges are awarded. In total, this court awards Rs.1,18,500/- towards compensation. As stated above, this court fixed the contributory negligence at the ratio of 50:50, the appellant/claimant is only entitled to Rs.59,250/- together with interest at the rate of 7.5% from the date of petition, till the date of deposit.

14.In the result, the Civil Miscellaneous Appeal is partly allowed and the appellant/claimant is entitled to compensation of Rs.59,250/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent Insurance Company is directed to deposit the entire award amount before the tribunal with interest @ 7.5% per annum, within a period of six weeks from the date of receipt of judgment copy. On such deposit, the appellant/claimant is



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permitted to withdraw the same by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar (Audit)

//True copy//

Sub Assistant Registrar

smn

To,

1.The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal
Vellore.

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

+1cc to Mr.C.Prabakaran, Advocate SR.No.97927

+1cc to Ms.R.Sreevidhya, Advocate SR.No.98096

CMA No.2547 of 2010

SSD(CO)
GMY(01/09/2021)