

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2933 of 2009

Karthik

...Appellant/Claimants

.Vs.

1.A.Ravindran

2.M/s.United India Insurance Company,
Ranga Complex IIInd floor,
Peramanoor Main Road, Salem.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 04.11.2008 passed in M.C.O.P.No.1694 of 2004 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.1, Salem.

For Appellant : Mr.S.Sivakumar

For R1 : No appearance

For R2 : Mr.C.Paranthaman

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.1694 of 2004 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.1, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 07.01.2003.

2. The case of the claimant is that on 07.01.2003, when he was riding his bicycle along five roads Rathna Complex, Salem, a speeding bus bearing Registration No. TN 29 E 9988 belonging to the first respondent and insured with the second respondent / United India Insurance Company, Salem, hit him from behind, as result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the first respondent was the cause of the accident and that since the said bus was insured with the second respondent / United

India Insurance Company, Salem, the owner of the bus as well as the insurer of the bus are jointly and severally liable to pay compensation to him.

3.The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, United India Insurance Company, Salem, contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Additional District Judge, Fast Track Court No.1, Salem, after analysing the evidence on record, awarded a compensation of Rs.93,470/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal also fixed contributory negligence on the claimant at 50% and directed the second respondent, United India Insurance Company, Salem, to pay compensation of Rs.46,375/- to the claimant. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Mr.S.Sivakumar, learned counsel appearing for the appellant / claimant contended that the Tribunal was wrong in fixing the contributory negligence on the part of the cyclist (claimant) merely based on the referred charge sheet filed by the Police. He also drew the attention of this Court to the evidence of the driver of the bus (R.W.2) and contended that when R.W.2 deposed in the chief examination that he was proceeding towards Dharmapuri from Salem, however admitted during the course of cross examination that the bus was actually proceeding from Salem to Krishnagiri. His specific contention is that the claimant and the bus were proceeding in the same direction and therefore the contention of the Sub-Inspector of Police, Pallapatty Police Station that the claimant (cyclist) crossed the five roads when the red signal was on and hit the bus head-on cannot be accepted.

5.There is force in the contention of the learned counsel for the appellant. The Tribunal merely based on the referred charge sheet filed by the police and the evidence of Sub-Inspector of Police had fixed contributory negligence on the part of the claimant and that too at 50%. Such an observation made by the Tribunal cannot be accepted for the following reasons:

(i) The Sub-Inspector of Police (R.W.1) has not done the investigation and his specific evidence is that he perused the evidence recorded by the Head Constable of Police and filed the referred charge sheet before the Court.

(ii) No notice was issued to the claimant before filing the referred charge sheet as "mistake of fact".

(iii) The Sub-Inspector of Police was not an eye-witness to the occurrence.

(iv) The claimant examined himself as P.W.1 and he has

clearly deposed that his cycle was hit by the bus from behind and there is nothing to discredit or disbelieve his versions.

6.As already observed, the driver of the bus also deposed that he was proceeding towards Salem from Krishnagiri and therefore it is clear that both the cyclist and the bus were proceeding in the same direction. Hence the contributory negligence fixed on the part of the cyclist by the Tribunal is liable to be set aside. As far as the quantum of compensation is concerned, the Tribunal had adopted multiplier No.16 even though the claimant was aged 17 years on the date of accident. The proper multiplier to be adopted in the instant case is '18' as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Dr.Rajamanickam (P.W.2) has assessed partial permanent disability of the claimant as 25%. A perusal of the discharge summary shows that the claimant has sustained degloving injury on his left leg and posterior aspect extending from knee to lower part of the leg and two operations were performed on him for excision of necrotic skin. The skin from his right thigh was harvested and left leg was covered with the same. It is pertinent to point out that the claimant was aged 17 years on the date of accident and Dr.Rajamanickam (P.W.2) has also clearly stated the consequences of the injuries sustained by the claimant. In fact, the claimant was admitted in Gokulam Hospital, Salem as an inpatient for 18 days. The notional monthly income of the victim is fixed as Rs.3,000/-. Considering the year of accident and the compensation towards partial permanent disability is calculated as Rs.3,000/- X 12 X 18 X 25/100 = Rs.1,62,000/-. Considering the severity of the injury and the medical treatment received, a sum of Rs.50,000/- is awarded for pain and sufferings. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.1,62,000/-
2.	Pain and sufferings	Rs.50,000/-
3.	Extra nourishment	Rs.25,000/-
4.	Damage to clothes	Rs.500/-
5.	Loss of amenities	Rs.1,00,000/-
6.	Transportation	Rs.10,000/-
7.	Medical expenses	Rs.30,472/-
8.	Attender's charges	Rs.2,000/-
Total		Rs.3,79,972/-

7. Thus, the compensation awarded by the Tribunal is enhanced from Rs.46,375/- to Rs.3,79,972/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.46,375/- to Rs.3,79,972/-.

(iii) The appellant / claimant is directed to pay the additional court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of receipt of a copy of this order.

(iv) The Registry is directed to draft the decree only after the receipt of necessary Court fee.

(v) The second respondent / United India Insurance Company, Salem, is directed to deposit the enhanced compensation amount i.e., Rs.3,79,972/- (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 M.C.O.P.No.1694 of 2004 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.1, Salem, within a period of four weeks from the date of receipt of a copy of this order.

(vi) 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

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To

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

2.The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.S.Sivakumar, Advocate SR.86802

+1cc to Mr.C.Paranthaman, Advocate SR.86187

C.M.A.No.2933 of 2009

NRL (CO)

CB(23/01/2020)