

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2019

Pronounced on : 19.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3528 of 2010

K.Kumar

... Appellant

Versus

1.K.Subramanian

2.The United India Insurance Co.Ltd.,
No.134, Greams Road, Silirgi buildings,
V floor, HUB, Chennai - 6.

... Respondents

(R1 set ex-parte in the lower court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 11.06.2009 made in MCOP.No.2070 of 2003 on the file of the Motor Accidents Claims Tribunal, V- Small Causes Court, Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand & Suryas

For Respondents : Mrs.R.Vijaya kamala (for R2)
: Exparte - R1

JUDGMENT

The claimant is the appellant herein. The claimant is seeking enhancement of compensation, inter-alia, contending that the finding of the Tribunal regarding contributing negligence is unsustainable.

2.The appellant/ claimant herein filed the claim petition alleging that on 14.12.2002 at 12 hours, when the appellant/claimant was crossing the Little Mount to Velachery main road junction, a two wheeler bearing Reg.No.TN.22.H.4471, coming to the same junction from Saidapet side, which was driven by its rider in a rash and negligent manner endangering the public safety, hit the claimant. As a result of which, the claimant sustained grievous injuries due to the fault of the rider of the two wheeler.

4.The Insurance company filed a counter statement alleging that the accident occurred due to the claimant's own negligence and denying their liability. They also denied the age, occupation and the income of the claimant, injuries, damages, expenses and disability.

5.The points that was raised for determination before the Tribunal is whether the accident had happened due to rash and negligent driving of the rider of the two wheeler bearing Reg.No.TN.22.H.4471?

6.Before the Tribunal, on behalf of the claimant, three witnesses were examined as PW.1 to PW.3 and Exs.P1 to P11 were marked. Neither any oral evidence was let in nor any documents were marked on the respondents side. The Second respondent has filed a petition in MP.No.1159 of 2009 under Section 170 of Motor Vehicles Act and the same was allowed on 09.06.2009.

7.The Tribunal, after considering the oral and documentary evidence has held that the accident occurred due to the negligence of the claimant as well as on account of the rash and negligent driving of the driver of the two wheeler and fixed 50% on each and awarded the compensation of Rs.61,900/-. In all, held that the claimant is entitled to 50% award amount towards compensation and directed the Insurance company to pay the same.

8.It is seen from the records of the Tribunal, that the mode and manner of the accident as spoken to by PW.1 was duly corroborated with Ex.P1/FIR , Ex.P2/Carbon copy of Rough Sketch and Ex.P3/Charge sheet. That apart, Ex.P4/Copy of case report revealed that the accused has pleaded guilty before the Magistrate Court and paid the fine. In such circumstances, this Court is of the considered view that the accident has taken place, due to the rash and negligent driving of the two wheeler which hit against the claimant, when he was crossing the road. Therefore, the finding of the Tribunal that the claimant/appellant contributed to the negligence cannot be sustained and said finding of the Tribunal is hereby stands vacated.

9.Furthermore, taking note of the scene of crime as projected by Exs.P2 & P3, this Court is of the considered view that the accident has taken place due to the rash and negligent driving of the two wheeler of the first respondent and the contra finding rendered before the Tribunal is unacceptable and the second respondent, being the insurer of the first respondent's vehicle, both the first and second respondents are jointly and severally liable to pay the entire compensation to the claimant.

10.On a perusal of compensation awarded by the Tribunal, under the various heads a sum of Rs.40,000/- awarded towards 40% of disability suffered by the claimant is just and reasonable, as spoken by PW.2/Dr.K.J.Mathiazhagan. Taking note

of the income of the claimant, the Tribunal awarded the sum of Rs.12,000/- towards loss of income for the period of three months. Considering the period of hospitalization, the sum of Rs.2,000/- each was awarded towards Transportation & Extra-nourishment. For the damages of clothes, the sum of Rs.500/- was granted and considering the medical bill/Ex.P6, the sum of Rs.400/- was awarded are just and proper and the same are hereby confirmed. Considering the nature of the injuries sustained by the claimant, this Court enhances the award amount of the Tribunal towards pain and suffering from Rs.5,000/- to Rs.15,000/-. Accordingly, the amount awarded under other heads by the Tribunal remains unaltered, except the amount awarded towards pain and suffering. In all, the compensation is enhanced as under:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.40,000/-	Rs.40,000/-
Loss of Income	Rs.12,000/-	Rs.12,000/-
Transport to hospital	Rs.2,000/-	Rs.2,000/-
Extra-nourishment	Rs.2,000/-	Rs.2,000/-
Damage to clothes	Rs.500/-	Rs.500/-
Medical expenses	Rs.400/-	Rs.400/-
Pain and suffering	Rs.5,000/-	Rs.15,000/-
Total	Rs.61,900/-	Rs.71,900/-

11. In the result,

(i) this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.61,900/- awarded by the Tribunal is hereby enhanced to Rs.71,900/-.

(ii) both the respondents are jointly and severally directed to deposit the entire enhanced compensation amount as determined by this Court, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) on such deposit, the appellant/claimant is entitled to withdraw the same, by making necessary application before the Tribunal.

(v) the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

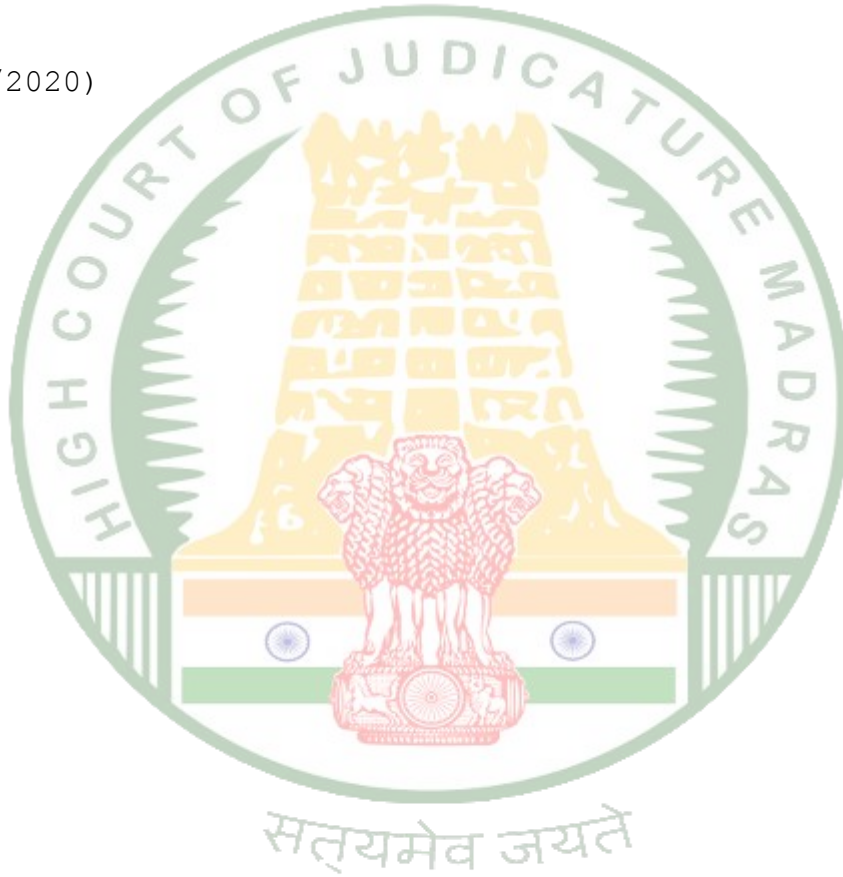
1.The Motor Accidents Claims Tribunal,
V- Small Causes Court, Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+lcc to Mrs.R.Vijaya kamala, Advocate SR.No.61806

CMA.No.3528 of 2010

VG II(CO)
GMY(06/01/2020)



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