

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.Nos.75 and 76 of 2010

Easwaran ...Appellant /Claimant in CMA No.75 of 2010
Azhagendran ...Appellant/Claimant in CMA No.76 of 2010

Vs.

1. Ummu Kolusumbeevi

2. M/s. United India Insurance Co Ltd.

58, Purasaiwakkam High Road

Chennai 7.

...Respondents/Respondents in both CMPs

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act 1988, against the order and decreetal order dated 05.08.2009 in M.C.O.P. Nos.471 of 2007 and 472 of 2007 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Perambalur.

For Appellant : Mr.S.Kamadevan (in both CMPs)

For Respondents : Mr.M.Krishnamoorthy for R2.
(in both CMPs)

R1 - No appearance.

COMMON JUDGMENT

The appellants are the claimants in M.C.O.P. Nos.471 of 2007 and 472 of 2007 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Perambalur.

2. They filed the abovesaid Claim Petitions seeking compensation for the injuries sustained by them in a road accident that took place on 31.08.2006. According to them, While the claimant in MCOP No.472 of 2007 was riding the two wheeler TVS 50 XL bearing registration No.TN 45 Q 5010 with the claimant in MCOP No.471 of 2007 as pillion rider on Trichy-Chennai National Highways road, a speeding tempo traveller bearing registration No.TN 22 AA 2113 belonging to the first respondent hit the two wheeler, as a result of which, both the appellants/claimants sustained multiple injuries and that they

were immediately rushed to the Government Hospital at Perambalur. Their further contention is that the rash and negligent driving of the driver of the tempo traveller bearing registration No.TN 22 AA 2113 was the cause of the accident and that since the said tempo traveller was insured with the second respondent / The United India Insurance Company Limited, Chennai, both of them are jointly and severally liable to pay compensation to them.

3. The owner of the tempo traveller remained absent before the tribunal and therefore, he was set exparte. The second respondent / The United India Insurance Company Limited, Chennai, contested the claim petition.

4. The learned Chief Judicial Magistrate, Perambalur, after analysing the evidence on record, dismissed the claim petitions on the ground that both the claimants were under the influence of alcohol at the time of accident and that the rider of the two wheeler, namely, the claimant in MCOP No. 472 of 2007 was not in possession of valid driving license.

5. Aggrieved over the orders passed by the tribunal, the appellants / claimants have filed the present appeal.

6. Mr.S.Kamadevan, learned counsel for the appellants / claimants would contend that the tribunal, merely based on the copies of Accident Register (Ex.P2 and Ex.P6), has come to the conclusion that both the claimants were under the influence of alcohol and therefore, they are not entitled to claim any compensation from the respondents. His contention is that the observation made by the tribunal cannot be sustained since no specific test was conducted by the doctor who examined the claimants immediately after the accident to show that both of them were under the influence of alcohol.

7. At the outset, it may be observed that no test was conducted separately to find out whether the claimants were under the influence of alcohol at the time of the accident. The tribunal merely based on Ex.P2 and Ex.P6 had dismissed both the claim petitions. Furthermore, the Sub Inspector of Police, Perambalur Police Station has registered FIR only against the driver of the tempo traveller bearing registration No.TN 22 AA 2113 and the final report was also filed against him. It is evident from the records that the driver of the tempo traveller pleaded guilty of offences under Sections 279 and 338 of IPC. Therefore, the tribunal was wrong in dismissing the entire claim petition. However, since the claimant in MCOP No. 472 of 2007 was not in possession of valid driving license, the contributory negligence is fixed at 25% on him.

8. Quantum of Compensation : It is contended that the claimant (Easwaran) in MCOP No.471 of 2007 is a labourer earning a sum of Rs.4,500/- per month. He was aged 30 years on the date of accident and a perusal of the Disability Certificate (Ex.P7) shows that the claimant sustained a fracture on his leg and the doctor has assessed the partial permanent disability as 28%. Since there is no functional disability, adopting multiplier method is not warranted. Under the circumstances, a sum of Rs.2,000/- per percentage is awarded i.e. a sum of Rs.56,000/- (2000 x 28) is awarded towards partial permanent disability. Apart from the above, a sum of Rs.2,000/-, Rs.10,000/-, Rs.5,000/- and Rs.1,000/-, Rs.1,000/- are awarded towards transportation, pain and suffering, extra nourishment, loss of articles and attender's charges respectively. It is mentioned in the claim petition that the appellant / claimant was working in a quarry earning a sum of Rs.4,500/- per month. Therefore, the monthly income of the claimant is fixed as Rs.4,500/- and on account of the injury sustained by him, he could not have attended his routine work atleast for 3 months. Therefore, a sum of Rs.13,500/- is awarded towards loss of income. The award passed by this court under various heads is extracted hereunder.

Sl.No.	Head	Amount (Rs.)
1.	Partial Permanent disability	56,000/-
2.	Transportation	2,000/-
3.	Pain and sufferings	10,000/-
4.	Extra nourishment	5,000/-
5.	Loss of income	13,500/-
6.	Loss of articles	1,000/-
6.	Attender's charges	1,000/-
	Total	88,500/-

9. It is contended that the claimant (Azhagendran) in MCOP No.472 of 2007 is a labourer earning a sum of Rs.4,500/- per month. He was aged 25 years on the date of accident and a perusal of the Disability Certificate (Ex.P9) shows that the claimant sustained fracture on his left hand and fracture of ribs. Dr.Saravanan has assessed the partial permanent disability as 34%. Since there is no functional disability, adopting multiplier method is not warranted. Under the circumstances, I hold that awarding a sum of Rs.2,000/- per percentage towards partial permanent disability would meet the ends of justice and thus a sum of Rs.68,000/- (2000 x 34) is awarded towards partial permanent disability. Apart from the above, a sum of

Rs.2,000/-, Rs.10,000/-, Rs.5,000/- and Rs.1,000/-are awarded towards transportation, pain and sufferings, extra nourishment and loss of articles respectively. It is mentioned in the claim petition that the appellant / claimant was working in a quarry earning a sum of Rs.4,500/-. Therefore, monthly income of the claimant is fixed as Rs.4,500/- and on account of the accident, he could not have attended his routine work. Thus the award passed by this court under various heads is extracted hereunder.

Sl.No.	Head	Amount (Rs.)
1.	Partial Permanent disability	68,000/-
2.	Transportation	2,000/-
3.	Pain and sufferings	10,000/-
4.	Extra nourishment	5,000/-
5.	Loss of income (4500 x 3)	13,500/-
6.	Loss of articles	1,000/-
	Total	99,500/-
	Less: 25% towards contributory negligence	24,875/-
	Total award amount	74,625/-

10. In the result,

(i) The appeals filed in CMA Nos.75 and 76 of 2010 are allowed. No costs.

(ii) The award passed by the tribunal in M.C.O.P. Nos.471 of 2007 and 472 of 2007 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Perambalur is set aside.

(iii) The second respondent / Insurance Company is directed to pay a sum of Rs.88,500/- (Rupees Eighty Eight thousand five hundred only) towards compensation to the appellant in CMA No.75 of 2010
and

Rs.74,625/- (Rupees Seventy Four Thousand Six hundred and twenty five only) to the appellant in CMA No.76 of 2010 together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the claimants in both the appeals are entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

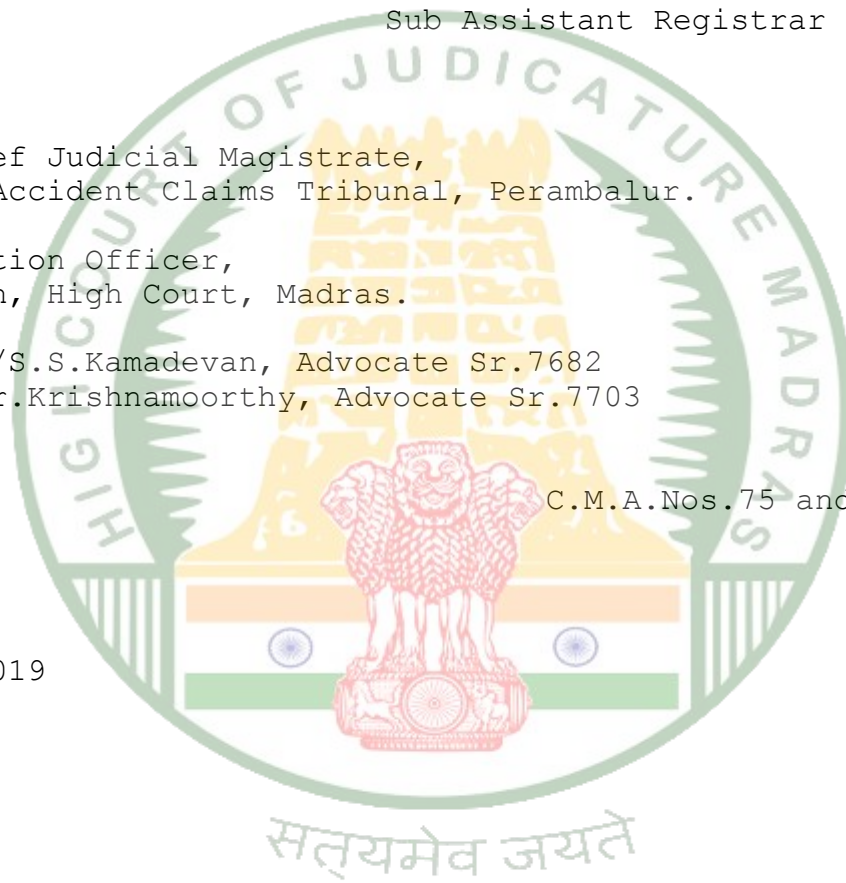
2.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.S.Kamadevan, Advocate Sr.7682

+1cc to Mr.Krishnamoorthy, Advocate Sr.7703

C.M.A.Nos.75 and 76 of 2010

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