

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1879 of 2015

B.Viswanathan ... Appellant /Petitioner

Vs.

1.A.M.Sanjeevi

2.United India Insurance Co.Ltd.,
No.45, Arcot Road, Saligramam,
Chennai-600 053. ... Respondents /Respondents

(R-1 set ex-parte before Tribunal
Notice may be dispensewith)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.07.2014 made in M.C.O.P.No.995 of 2011, on the file of the II Additional District Court, Motor Accidents Claims Tribunal, Thiruvallur at Poonamallee.

For Appellant : Mr.K.Suryanarayanan

For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 24.07.2014 made in M.C.O.P.No.995 of 2011, on the file of the II Additional District Court, Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee.

2.The appellant is claimant in M.C.O.P.No.995 of 2011, on the file of the II Additional District Court, Motor Accidents Claims Tribunal, Poonamallee. He filed the above said claim petition claiming a sum of Rs.10,00,000/- (amended vide order dated 15.07.2015 made in M.P.No.1 of 2015 in C.M.A.SR.No.52771 of 2015) as compensation for the injuries sustained by him in the accident that took place on 25.09.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

negligence on the part of the driver of the bus belonging to the first respondent as well as the rider of the motorcycle and fixed negligence at 75% & 25% respectively, and held that the appellant is entitled only 75% of the compensation awarded for the negligent riding of the motorcycle by its owner.

4.The appellant has come out with the present appeal, challenging the portion of the award fixing 25% contributory negligence on the part of the rider of the motorcycle and for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 25% negligence on the part of the rider of the motorcycle. The Tribunal failed to see that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to first respondent, insured with second respondent. The Tribunal ought to have directed the second respondent-Insurance Company to pay the entire compensation awarded. The Tribunal having held that the appellant is entitled to compensation of Rs.19,50,520/-, erred in restricting the same to Rs.10,00,000/- as the appellant has claimed only Rs.10,00,000/- in the claim petition. The Tribunal and Courts must award just compensation and have power to award more compensation than what is claimed in the claim petition and prayed for setting aside 25% of the negligence fixed on the rider of the motorcycle and enhancement of compensation.

6.The learned counsel appearing for the appellant relied on the judgment of this Court reported in 2017 (2) TNMAC 388 (DB) [Oriental Insurance Co.Ltd., Kumbakonam Vs. Panchavarnam and others], wherein it has been held as follows:

..."6. Learned counsel for the appellant submitted that a reading of Ex.P1 - First Information Report would show that the motorcyclist dashed against the deceased, and he fell on the northern side, near the rear wheels of the bus and in that event, the left rear wheel of the bus ran over the head of the deceased. Therefore, when two different tort-feasors were involved in the incident, the damages claimed by a third party, shall be treated as composite negligence and only one party cannot be fastened with liability. In such circumstances, the carelessness / negligence, proximate to the cause of accident, has to be gone into.

7. In support of the above contention, learned counsel appearing for the appellant / insurance company relied on a judgment of the Hon'ble Supreme Court in MUNICIPAL CORPORATION OF GREATER BOMBAY VS. LAXMAN IYER AND ANOTHER [2004 ACJ 53] wherein, the Hon'ble Supreme Court, at para 6, observed that where a person is injured without any negligence on his part, but as a result of the combined effect of negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence (See Pollock on Torts, 15th Edition, P.361). Further, the Hon'ble Supreme Court discussed about the doctrine of last opportunity. Even though the theory of last opportunity is no longer applied, the Hon'ble Supreme Court held that negligence cannot be completely wiped out, as in the instant case, the rear wheel of the bus rolled over the head of the deceased. Therefore, he contends that on the basis of the judgment of the Hon'ble Supreme Court, even though the bus driver had driven the bus following the traffic rules and regulations and at a slow speed, negligence on his part also should be fixed.

8. The learned counsel appearing for the appellant would rely on a judgment of the Hon'ble Supreme Court in T.O. ANTHONY VS. KARVARNAN AND OTHERS [2008 ACJ 1165] wherein, the Hon'ble Supreme Court held that where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and that the injured person has the choice of proceeding against all, or any of them.

12. From the reading of the judgment of the Hon'ble Supreme Court, it is clear that when two or more tortfeasors were involved in an accident and the damages claimed against them, it shall be construed as composite negligence and the claimant is entitled of his choice to recover the compensation from any of the tortfeasors. Insofar as the apportionment is concerned, it is only to fix the extent of liability of inter se tort-feasors in order to pay and recover the same from the other tort-feasor."

7. Per contra, Mr. C. Paranthaman, the learned counsel appearing for the second respondent/Insurance Company contended that the accident did not occur due to rash and negligent driving by the driver of the bus. The accident occurred only due to rash and negligent riding by the rider of the motorcycle. The Tribunal erred in not accepting the accident register, wherein it has been clearly mentioned that rider of the motorcycle slipped off and went under the bus. In view of the accident register, the Tribunal ought to have fastened entire negligence on the part of the rider of the motorcycle. In any event, there are two vehicles involved in the accident. The Tribunal ought to have fixed equal negligence on the part of both the driver of the bus and rider of the motorcycle. The Tribunal without properly appreciating the facts of the present case, erred in arriving at total compensation of Rs.19,50,520/-. The facts of the case in the judgments of the Hon'ble Apex Court relied on by the Tribunal are different and ratio in those judgments are not applicable to the facts of the present case and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused the entire materials available on record.

9. As far as negligence for the accident is concerned, it is the contention of the appellant that the bus dashed against the motorcycle and caused the accident. In the accident, the appellant sustained injuries and claimed compensation. On the other hand, it is contended by the second respondent/Insurance Company that the rider of the motorcycle who was going in front of the bus slipped and both rider and appellant (pillion rider) fell down under the bus and rolled over. The learned counsel appearing for the second respondent/Insurance Company relied on

Ex.P2/accident register. The Tribunal did not accept the accident register on the ground that the second respondent did not prove as to who gave particulars of the accident. At the same time, the Tribunal did not rule-out the same in entirety. The contention of the second respondent/Insurance Company that the rider of the motorcycle slipped and both rider and appellant fell down and the accident occurred when both of them rolled over under the wheels of the bus. The Tribunal fastened 75% of the negligence on the part of the driver of the bus on the ground that had he been cautious and careful in driving the heavy vehicle, he could have avoided the accident. The Tribunal fixed 25% of negligence on the part of the rider of the motorcycle as the contention of the second respondent is also possible and acceptable. There is no error in the said finding of the Tribunal fixing 25% negligence on the part of the rider of the motorcycle and directing the Insurance Company to pay 75% of the compensation awarded. The judgment relied on by the learned counsel for the appellant is not applicable to the facts of the case.

10.As far as quantum of compensation is concerned, the Tribunal followed the judgment of Apex Court relied on by the learned counsel appearing for the appellant and arrived at compensation of Rs.19,50,520/-. The facts of the cases in the judgment of the Hon'ble Apex Court are similar to the facts of the present case. By applying the ratio in the judgment relied on by the learned counsel appearing for the appellant held that the Tribunal arrived at total compensation of Rs.19,50,520/- and 75% of the same is payable by the second respondent/Insurance Company. But, the Tribunal awarded only Rs.10,00,000/-, as the appellant has claimed only Rs.10,00,000/- in the claim petition. The said reason is not correct. It is well settled that Courts must award just compensation even more than what is claimed in the claim petition. The compensation awarded should not be meager, at the same time, it should not be exorbitant. In the present case, the Tribunal arrived at compensation of Rs.19,50,520/- which is just compensation as per the guidelines of Hon'ble Apex Court. For the above reason, the appellant is entitled to a sum of Rs.19,50,520/- as arrived by the Tribunal. The appellant is entitled to 75% of the amount arrived by the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation arrived by the Tribunal at Rs.19,50,520/- is hereby confirmed. Out of the total compensation arrived, the second respondent/Insurance Company is liable to pay 75% of the award amount, i.e.Rs.14,62,890/- with interest at the rate of 7.5% per annum from the date of petition

till the date of realization. The second respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gbi/krk
To

The II Additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee.

Copy to

The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.K.Suryanarayanan, Advocate Sr.5659
+2cc to Mr.C.Paranthaman, Advocate Sr.5609

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