

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2607 of 2011

Chitibabu

... Appellant/Petitioner

vs.

Union of India
Represented by
The Commandant,
CRPF Camp (Type III),
Avadi,
Chennai-54.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 19.04.2010 made in M.C.O.P.No.4476 of 2005 on the file of the Motor Accidents Claims Tribunal/II Additional Judge, Fast Track Court, Chennai.

For Appellant : Mr.S.Kannan
for Mr.K.Ayyadurai

For Respondent : Mr.D.Simon

JUDGMENT

The appellant is the claimant in M.C.O.P.No.4476 of 2005 on the file of the Motor Accident Claims Tribunal/II Additional Judge, Fast Track Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,50,000/- for the injuries sustained by him in a road accident on 28.03.2005.

2. The case of the claimant is that on 28.03.2005, he was riding his motorcycle bearing Registration No.TN-09-AF-3007 towards Avadi from West Mambalam and at about 16.45 hours, a speeding school bus bearing Registration No.DBP-8149 hit his motorcycle, as a result of which, he fell down and sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the school bus belonging to the respondent was the cause of the accident and therefore, they are liable to pay compensation to him.

3. The learned Motor Accident Claims Tribunal / II Additional Judge, Fast Track Court, Chennai, after analysing the evidence on record, awarded a compensation of Rs.1,66,276/- together with interest at the rate of 9% per annum to the claimant and fixed contributory negligence on the part of the claimant to the extent 25%, since he did not possess a valid driving licence on the date of the accident. Thus the respondent was made liable to pay 75% of the award amount ie., Rs.1,24,707/- with interest at the rate of 9% per annum. 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.Kannan, learned counsel appearing for the appellant relying on the decisions in (i) Sudhir Kumar Rana vs. Surinder Singh & Others reported in 2008 (3) CTC 605(SC) (ii) Dinesh kumar, J. @ Dinesh, J. vs. National Insurance Company Limited reported in 2018 (1) TN MAC 34 (SC) and contended that the Tribunal cannot fix contributory negligence on the ground that the rider of the motorcycle was not in possession of a valid driving licence on the date of the accident. He also prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the respondent contended that the Tribunal after considering all the aspects of the case, fixed contributory negligence on the part of the claimant to the extent 25% and awarded a just compensation of Rs.1,66,276/- together with interest at the rate of 7.5% per annum and the same need not be disturbed at this stage. He therefore prayed for dismissal of the appeal.

6. A perusal of the orders passed by the Tribunal shows that the Tribunal fixed contributory negligence on the part of the claimant to the extent 25%, only on the basis that he was not in possession of a valid driving licence on the date of the accident. In the decision in Dinesh kumar, J. @ Dinesh, J. vs. National Insurance Company Limited (cited supra), it is held that, mere failure to produce driving licence is not sufficient to draw adverse inference on the aspect of contributory negligence. It is relevant to extract paragraph 8 of the Judgment:

"8....

9.If a person drives a vehicle without a Licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the Courts below that it was the Driver of the Mini Truck, who was driving rashly and

negligently. It is one thing to say that the Appellant was not possessing any Licence but no finding of fact has been arrived at that he was driving the Two-Wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a Licence, he would be held to be guilty of Contributory Negligence...''

In the light of the above decision, I hold that the observations of the Tribunal that the claimant also contributed to the extent 25% cannot be sustained.

7. Quantum of compensation: A perusal of the discharge summary (Ex.P2) shows that the appellant/claimant has sustained (i) fracture shaft of left femur and (ii) fracture left patella with internal derangement of left knee. Dr.Saravana Bavanantham (PW2), has assessed the partial permanent disability as 45%. Since the disability of 45% cannot be for the whole body, 5% disability is taken up for calculating "loss of earning capacity". The claimant is an agent in LIC and was aged 48 years on the date of the accident. The proper multiplier to be adopted in the instant case is 13, as per the decision in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. A perusal of Income Tax Returns for the assessment year 2005-06 (Ex.P6) shows that he was earning a sum of Rs.1,37,130/- per annum. The annual income after deducting income tax, comes to Rs.1,19,318/-. The "loss of earning capacity" is calculated as follows:

Loss of earning capacity:
= Rs.1,19,318/- x 13 x 5/100
= Rs.77,557/-

On account of the accident, the appellant / claimant would not have been in a position to attend to his routine work atleast for six months and therefore, a sum of Rs.29,829/- is awarded towards "loss of income". 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. 77,557/-
2	Pain and Sufferings	Rs. 10,000/-
3	Extra Nourishment	Rs. 5,000/-

S.No.	Head	Amount granted by this court
4	Loss of Income (Rs.9943 X 3)	Rs. 29,829/-
5	Transportation	Rs. 5,000/-
6	Attender Charges	Rs. 2,000/-
7	Damage to Clothing	Rs. 500/-
8	Loss of Amenities	Rs. 10,000/-
9	Medical Bills	Rs. 1,06,276/-
10	Future Medical Expenses	Rs. 10,000/-
	Total	Rs. 2,56,162/-

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,66,276/- to Rs.2,56,162/-.

(iii) The contributory negligence fixed on the part of the claimant to the extent 25% is set aside and the respondent is liable to pay the entire compensation awarded by this Court.

(iv) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(v) The respondent is directed to deposit the enhanced compensation amount i.e., Rs.2,56,162/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum on Rs.2,46,162/- from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.4476 of 2005 on the file of the Motor Accident Claims Tribunal/II Additional Judge, Fast Track Court, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(vi) On such deposit being made, the appellant / claimant is at liberty to withdraw the same, after following due process of law.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
II Additional Judge,
Fast Tract Court,
Chennai.

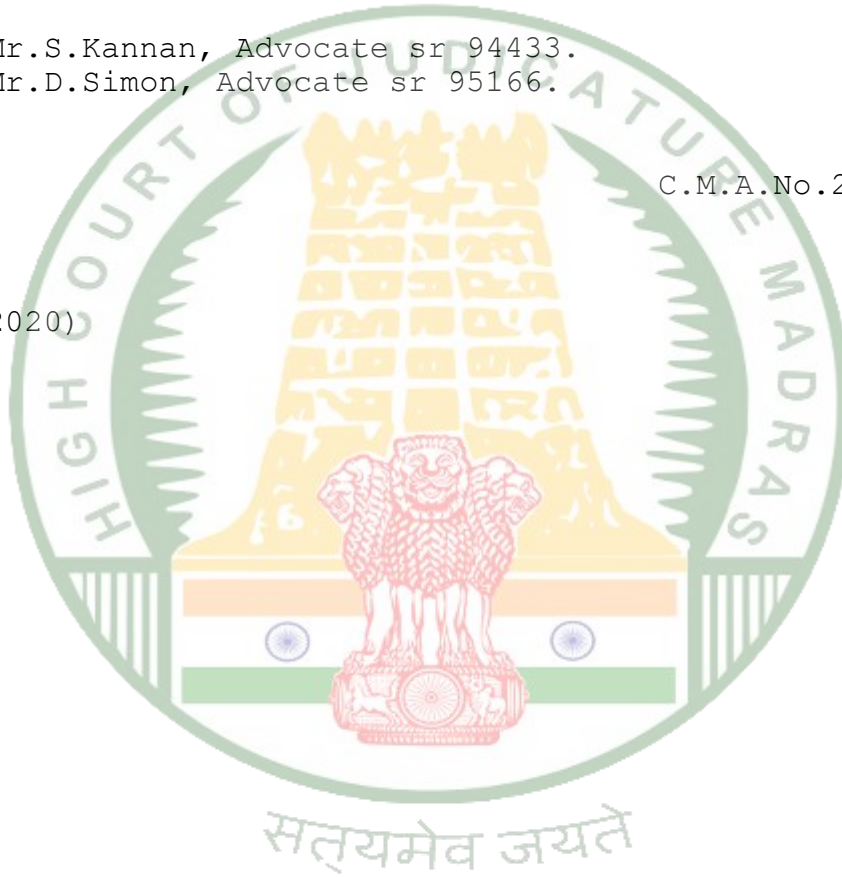
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1 CC to Mr.S.Kannan, Advocate sr 94433.

+1 CC to Mr.D.Simon, Advocate sr 95166.

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SR(CO)
SP(09/09/2020)



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