

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3483 of 2011

Colbert

...Appellant/Petitioner

..Vs..

1.R.Selvam

2.The Branch Manager,
National Insurance Company Limited,
Avinash Road, Tirupur. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21.07.2009, passed in M.C.O.P.No.515 of 2004, on the file of the II Additional District Court, (FAC), Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr.K.Sasindran
for Achari & Antoni Associates

For Respondents : Mr.C.R.Krishnamoorthy for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in M.C.O.P.No.515 of 2004 on the file of the II Additional District Judge, Motor Accidents Claims Tribunal, Pondicherry. He filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 21.03.2004, at about 14.30 hours, on 100 feet road, Near Indira Gandhi Statue, Pondicherry, when he was walking with his son to board a bus.

2. According to the appellant/claimant, a speeding Hero Honda Passion motorcycle bearing Registration No. TN 39 V 0794 belonging to the first respondent, hit him, as a result of which, he sustained injuries all over his body and was immediately rushed to Government General Hospital, Pondicherry. He would further contend that the rash and negligent riding of the motorcycle bearing Registration No.TN 39 V 0794 belonging to the first respondent was the cause of the accident and that, since the said motorcycle was insured with the second respondent, the National Insurance Company

Limited, both of them are jointly and severally liable to pay compensation to him.

3.The owner of the said motorcycle/ first respondent remained absent before the tribunal and therefore, he was set ex-parte. The second respondent contested the claim petition. However, the tribunal while awarding a compensation of Rs.65,000/- directed the owner of the vehicle/ first respondent to pay the entire compensation to the appellant/claimant, on the ground that since the rider of the motorcycle was one Ravi and not K.Murugesan, as stated by the appellant/claimant.

4.Aggrieved over the orders passed by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5.Mr.K.Sasindran, learned counsel appearing for the appellant would contend that the tribunal dismissed the claim petition as against the second respondent, National Insurance Company Limited, mainly, contending that one K.Murugesan was not the rider of the said motorcycle. He also drew the attention of this Court to the copy of the Accident Register (Ex.R3), wherein, the rider of the offending motorcycle was mentioned as one Ravi. His specific contention is that, merely because, it is mentioned in the Accident Register(Ex.R3) that one Ravi was the rider of his motorcycle bearing Registration No.TN 39 V 0794, the tribunal should not have come to the conclusion, that, Ravi alone was the rider of the motorcycle, especially when the owner of the motorcycle did not deny the manner of accident.

6.Per contra, Mr.C.R.Krishnamoorthy, learned counsel appearing for the second respondent, National Insurance Company Limited would contend that the appellant/claimant (PW.1) has clearly deposed that the rider of the two wheeler was one Ravi and not K.Murugesan and that the said Ravi was not in possession of the valid driving license.

7. It is pertinent to point out that the second respondent, National Insurance Company has not issued any notice to the rider of the two wheeler as well as the owner to produce the driving licence. Furthermore, the owner of the two wheeler did not dispute the claim petition and remained absent before the tribunal and therefore, he was set ex-parte. The tribunal merely based on the Accident Register (A5) has held that the offending two wheeler was driven by one Ravi not by K.Murugesan. Since the said Ravi was not in possession of valid driving licence on the date of the accident, the claim petition was dismissed.

8.It is pertinent to point out that no opportunity was given to the rider and owner of the motorcycle to produce the driving license. In the facts and circumstances, I hold that both the owner and the Insurance Company are jointly and severally liable to pay compensation to the appellant/claimant. The compensation awarded by the tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.50,000/-
2.	Mental agony and Pain and sufferings	Rs.5,000/-
3.	Loss of income	Rs.5,000/-
4.	Medical and Transport expenses	Rs.2,000/-
5.	Rich and nutritious food	Rs.2,000/-
6.	Damages to clothes	Rs.1,000/-
	Total	Rs.65,000/-

9. A perusal of the records shows that the appellant /claimant was working as a lower division clerk in ESI Hospital and the award passed by the tribunal clearly shows that the tribunal has awarded a just compensation and by no stretch of imagination, it can be said to be on the higher side. Infact, no cross objections appeal was filed by the appellant/claimant and therefore the quantum of compensation awarded by the tribunal is upheld.

10.In the result,

i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The order passed by the tribunal is upheld.

(iv)The owner of the motorcycle bearing Registration No. TN 39 V 0794 is directed to deposit the entire compensation awarded by the tribunal (less the amount already deposited by them) 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 in M.C.O.P.No. 515 of 2004, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Puducherry, within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

vkrr

To

The Motor Accidents Claims Tribunal,
II Additional District Court,
Puducherry.

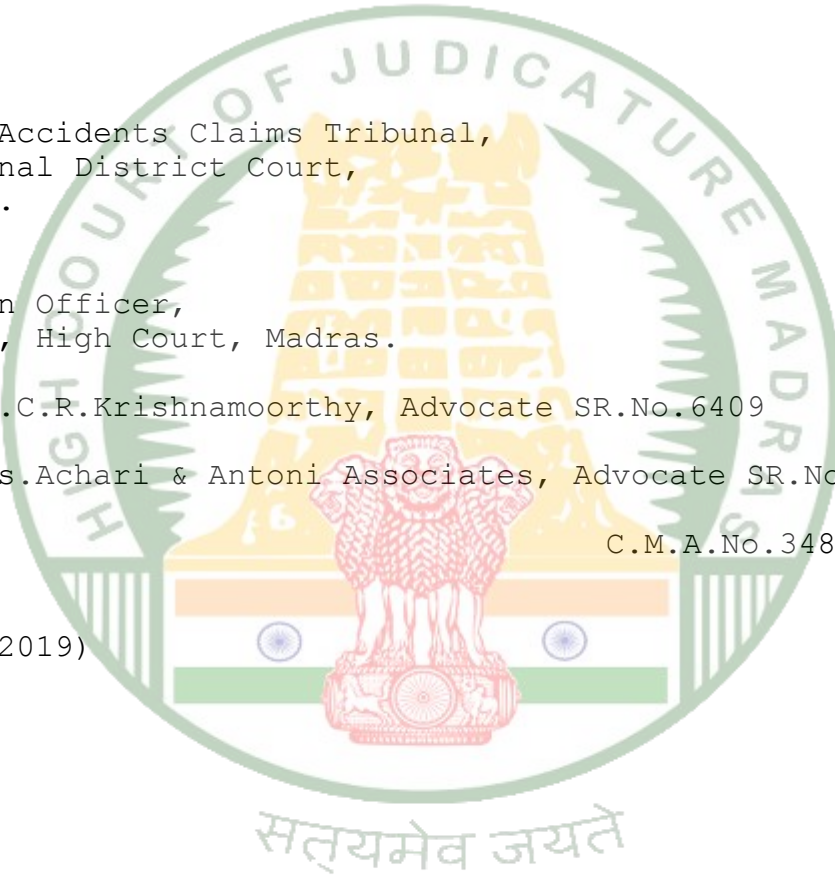
Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.6409

+1cc to M/s.Achari & Antoni Associates, Advocate SR.No.6617

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PM(CO)
GMY(10/12/2019)



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