

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.998 of 2011

&

M.P.No.1 of 2011

L.Shanthilal

M/s. Variety Hall Agencies

Mount Pleasant Road,

Main Road, Ooty,

The Nilgiris.

... Appellant/2nd Respondent

Versus

1. G.Prakash

...1st Respondent/Petitioner

2. M.Abdul Khadar

...2^{dn} Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.11.2009 made in M.C.O.P.No.660/2006 on the file of the Motor Accident Claims Tribunal and I Additional Subordinate Judge's Court at Coimbatore.

For Appellant : Ms.S.Akila

for M/s.Sarvabhauman Associates

For R1

: No Appearance

For R2

: Tapal Returned

JUDGMENT

The appellant/second respondent has preferred this Civil Miscellaneous Appeal against the award and decree dated 21.11.2009 made in M.C.O.P.No.660/2006 on the file of the Motor Accident Claims Tribunal and I Additional Subordinate Judge's Court at Coimbatore for modifying of compensation, for the injuries sustained by the first respondent/petitioner in a road accident.

2.The brief facts of the case of the appellant/second respondent, in a nutshell, are as follows:-

On 23.11.2002 at about 10.30 A.M., the car was driven by the second respondent/first respondent who was proceeding to Mettupalayam in a proper manner adhering the traffic rules. The car was running at a very meagre speed. The first respondent/petitioner, who was unauthorized to drive any vehicle and not holding a valid licence was driving the two wheeler namely TVS 50 XL bearing Registration No.TN.38 M 6475 at the western side of the road with 3 sacks fully loaded with flowers and two other sacks with other materials. The first respondent/petitioner was riding the vehicle in such a way that he had no control or balance in the vehicle and seemed more like an acrobatic stunt. When the appellant/second respondent's car approached the two wheeler, the first respondent/petitioner suddenly turned to his right and caused the accident. The accident was caused due to rash and negligent driving of the first respondent/petitioner and not due to the second respondent/ first respondent. The first respondent/petitioner does not hold any valid driving licence and was prohibited from driving any vehicle in public roads, more so on the Mettupalayam Road being a National Highway.

3. Before the Tribunal, on the side of the claimant, he himself examined as P.W.1 and marked eight documents as Ex.P.1 to Ex.P.8. On the side of the respondents, neither oral nor documentary evidence was adduced. The Tribunal, after considering the entire evidences, has come to the conclusion that the accident was the result of rash and negligent driving of the driver of the car and held that the owner and driver of the car are jointly and severally liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal has passed an award for a total sum of Rs.84,200/- as compensation.

4. The owner of the vehicle is the appellant herein, challenging the award passed in M.C.O.P.No.660/2006 dated 21.11.2009.

5. Heard, the learned counsel appearing for the appellant. Respondents are called absent.

6. It is seen from the evidence of PW1 coupled with FIR, which was marked as Ex.P1 and the Rough Sketch, which was marked as Ex.P5. The first respondent before the Tribunal drove the car in a rash and negligent manner and the second respondent is the owner of the car/ appellant herein. Hence the trial Court

taking note of the evidence of the PW1 version of the injured along with the documentary evidences marked as Ex.P1, P4, P5 and P6 came to the conclusion that the accident has taken place due to the rash and negligence of the driver of the car. Therefore, the same is hereby confirmed.

7. On the point of quantum, after perusing Ex.P3, it appears that issued by the Ganga Hospital. PW1 suffer the following injuries:-

"1. Right Hip: Swelling and tenderness over the right hip joint.

2. Right Hand: Multiple superficial abrasion over the dorsum of hand measuring 5x6cm and 2x3cm.

3. Scalp: Superficial laceration over right side of scalp over the posterior aspect and posterior aspect of right ear.

4. Multiple abrasions over back left side and left dorsum of hand."

8. After perusing the Award passed by the Tribunal under the head 'grievous injury' apart from permanent disability is hereby stands vacated. Taking into consideration that the claimant has suffered Hip fracture and the necessary document filed thereon the disability for the fractures suffered is fixed at 30% and compensation of Rs.30,000/- is awarded towards disability. The loss of income during the period is fixed at 150 x 30 x 3 and accordingly it re-assessed at Rs.13,500/- and the compensation towards Pain and sufferings is awarded at Rs.10,000/-. The transportation, Extra Nourishment, damages to cloths and medical expenses as granted by the trial Court are confirmed.

9. Thus, the award passed by the Tribunal as modified as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.27,000/-	Rs.13,500/-
Disability	----	Rs.30,000/-
Transportation	Rs.2,000/-	Rs.2,000/-
Extra nourishment	Rs.2,000/-	Rs.2,000/-
Damages to cloths	Rs.1,000/-	Rs.1,000/-
Medical expenses	Rs.4,200/-	Rs.4,200/-
Pain and Sufferings	Rs.20,000/-	Rs.10,000/-
One big wound	Rs.25,000/-	-----
Three small wound	Rs.3,000/-	-----

Total

Rs.84,200/-

Rs.62,700/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.84,200/- awarded by the Tribunal is hereby reduced to Rs.62,700/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The appellant/Second respondent is directed to deposit the modified award amount 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 Judgement. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
I Additional Subordinate Judge's Court,
Coimbatore.

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

+1cc to M/s.Sarvabhauman Associates Sr.21594

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