

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.502 of 2012

Kasthuri

... Appellant

.Vs.

The Managing Director,
Tamilnadu Transport Corporation Limited,
Salem Division - II, Bharathipuram,
Salem Main Road, Dharmapuri. ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.10.2011 passed in M.C.O.P.No.618 of 2009 on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Krishnagiri.

For Appellant : Mr.P.Mani
For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.618 of 2009 on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Krishnagiri. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident on 18.03.2008.

2. The case of the claimant is that on 18.03.2008, she was a pillion rider in a motorcycle bearing Registration No. TN 29 T 4279 on Uthangarai - Mathur National Highways and at about 09.30 A.M., when she was nearing Sonarhalli branch road, a speeding bus bearing Registration No. TN 29 N 1315 hit the motorcycle, as a result of which, she fell down and sustained injuries. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the respondent / Tamilnadu Transport Corporation Limited was the cause of the accident and therefore, they are liable to pay compensation.

3. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Krishnagiri, while awarding compensation of Rs.55,000/- together with interest at the rate of 9% per annum, fixed contributory negligence on the part of the claimant to the extent 50%. 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.P.Mani, learned counsel appearing for the appellant / claimant contended that the Tribunal was wrong in deducting 50% of total award amount, especially, when the claimant was only a pillion rider. He would further contend that the award passed by the Tribunal is meagre and the same is liable to be enhanced.

5. Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent / Tamilnadu Transport Corporation Limited contended that the Tribunal after considering the oral and documentary evidence adduced on both sides, had fixed contributory negligence on the part of the rider of the motorcycle to the extent 50% and the same need not be disturbed at this stage.

6. In the instant case, the First Information Report was registered against the driver of the bus. The claimant has clearly deposed that the driver of the bus was rash and negligent. The evidence of the driver of the bus, is not sufficient to hold that the rider of the motorcycle was also negligent. Even otherwise, the claimant was only a pillion rider. In the facts and circumstances, this Court is of the opinion that the contributory negligence fixed on the part of the claimant to the extent 50% is liable to be set aside .

7. Quantum of compensation: A perusal of medical records shows that the claimant had sustained a fracture of "coracoid" bone. Dr.S.Krishnakumar (PW2), has assessed the partial permanent disability as 30%. In the claim petition, the claimant has contended that she is a milk vendor, earning a sum of Rs.3,000/- per month. Hence, awarding a sum of Rs.20,000/- towards partial permanent disability would meet the ends of justice. Further, on account of the accident, the claimant would not have been in a position to attend her routine work atleast for three months and therefore, a sum of Rs.9,000/- (Rs.3,000/- X 3 months) 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.20,000/-
2.	Loss of income	Rs.9,000/-
3.	Extra nourishment	Rs.1,000/-
4.	Attender's charges	Rs.1,000/-
5.	Pain and sufferings	Rs.10,000/-
6.	Loss of amenities	Rs.20,000/-
Total		Rs.61,000/-

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.27,500/- to Rs.61,000/-, which would carry interest at the rate of 7.5% per annum.

(iii) The respondent / Tamilnadu Transport Corporation Limited is directed to deposit the enhanced compensation amount i.e., Rs.61,000/- (less the amount already deposited) 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 M.C.O.P.No.618 of 2009 on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
The Additional Sub Court,
Krishnagiri.

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 94380

+1cc to Mr.P.Mani , Advocate SR.No. 94018

सत्यमेव जयते

C.M.A.No.502 of 2012

A.SK(02/09/2020)

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