

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2099 of 2016

M. Elangovan ... Appellant/Petitioner

Vs.

1. A.Muruganandham

2. C.Krishnan

3. Shri Ram General Insurance Company Ltd.,
10003-E-B, RIICO Industrial Area, Sitapura,
Jaipur, Rajasthan - 302 022

4. P.Kannan

5. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Chennimalai Road,
Erode

... Respondents

Prayer:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying enhancement of the compensation amount and to fix the entire negligence/liability on the respondents 1 to 3 in the judgment and decree dated 02.09.2015 made in M.C.O.P.No. 315 of 2011 on the file of learned Special Subordinate Judge/Motor Accidents Claims Tribunal, Sathyamangalam.

For Appellant : Mr.V.Anandhamurthy

For Respondents : Mr.K.Poomalai for R3
No Appearance for R1,R2,R4,R5

JUDGMENT
(Delivered by M.M.Sundresh,J.)

This appeal is filed by the claimant not satisfied with the award of the Tribunal in MCOP No.315 of 2011, dated 02.09.2015, by which a sum of Rs.19,84,120/- was awarded with 7.5% interest. The appellant was travelling in a bus on 04.06.2012 which met with an accident. Along with the appellant scores of other passengers were also injured in the accident. The appellant had his right hand amputated which was replaced with an artificial one. Needless to state that he was forced to undergo surgery for the aforesaid reason. The driver of the vehicle, which was involved in the accident, pleaded guilty and paid the fine before the Magistrate Court, Avinashi in STC No.2142 of 2011.

2. The Tribunal, strangely, fixed the contributory negligence on the part of the appellant on mere presumption. It did not award any amount on conventional heads as mandated by the Apex Court in Dinesh Singh v. Bajaj Allianz General Insurance Company Limited and another reported in (2014) 9 SCC 241. Though the disability was fixed at 80%, the compensation amount was reduced to 50% on the premise that the appellant also contributed for the accident. Challenging the same and seeking enhanced compensation, the present appeal has been filed by the appellant.

3. Learned counsel appearing for the appellant would submit that the Tribunal fixed the contributory negligence on mere surmise. No amount has been awarded under the conventional heads. Therefore, the appeal will have to be allowed by enhancing compensation. To buttress his stand, he has placed reliance upon the Apex Court decision in Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited reported in (2014) 2 SCC 735.

4. Learned counsel appearing for the third respondent has submitted that what has been given by the Tribunal is a fair compensation for the amputation of the right hand and the amount awarded is just and fair compensation. Hence, no interference is required.

5. On a perusal of the award, it appears that the Tribunal has made a guess work and presumed that the appellant also would have contributed by stretching his right hand sans any evidence to buttress the same. Admittedly, the driver of the other vehicle has pleaded before the jurisdictional criminal court accepting the mistake. There is no evidence to show that the appellant was stretching his hand outside the bus. Just because others have suffered lesser injury, it cannot be presumed that

the injuries suffered by the appellant were only due to the fact that he was stretching his hand outside.

6. With regard to the issue relating to contributory negligence, the learned counsel for the appellant relied on the decision in Syed Sadiq (supra), wherein it has been held as follows:-

"29. On the matter of extent of contribution to the accident, it is held by the Tribunal that the appellant claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the appellant claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been charge-sheeted under Sections 279 and 338 IPC, but given the facts and circumstances of the case, the appellant claimants also contributed to the accident to the extent of 25%. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellant claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellant claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside."

7. We find that the ratio laid down in the decision referred supra will have to be made applicable to the case on hand in favour of the appellant. In a case, where there was no contest with respect to the negligence leading to the accident coupled with the fact that there was no evidence to show that it was the appellant who was responsible for the nature of injuries sustained by him, the Tribunal ought not have undertaken the said exercise on mere presumption and assumption by fixing the negligence on the appellant as if the appellant also contributed

for the accident. In such view of the matter, the award rendered by the Tribunal stands set aside.

8. Consequently, we have to find and see what would be the amount required to be fixed with respect to the loss of earning. The Tribunal has taken 80% as loss of earning and fixed the sum at Rs.36,56,941/-, and deducted 50% of the amount towards contributory negligence. We find that the facts of the case would require loss of earning to be fixed at 60% of the total sum so arrived and should be fixed at Rs.21,94,164/- (i.e., Rs.36,56,941*60/100). The Tribunal has also not fixed any amount under conventional heads. We add a sum of Rs.25,000/- under conventional heads. Accordingly, we round off the compensation to Rs.22,20,000/-.

9. The appeal is allowed to the aforesaid extent, as indicated above. The interest rate as fixed by the Tribunal is reiterated. The aforesaid exercise will have to be carried out by the third respondent within a period of eight weeks from the date of receipt of a copy of the order. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm

To:

1. The Special Subordinate Judge
Motor Accidents Claims Tribunal,
Sathyamangalam.

2. The Section Officer,
VR Section, High court,
Madras-104

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.10627
+1cc to Mr.K.Poomalai, Advocate, S.R.No.10888

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RV(CO)
CS/12/06/2019