

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.1229 OF 2014

R.Kumari

...Appellant/Petitioner

.Vs.

1. K.M.Prashanth

2. The New India Assurance Company Limited,
Hema Mangim II Second Floor,
P.B.No.96, Gandhi Bazaar,
Hassan - 573 201. ... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.03.2013 passed in M.C.O.P.No.411 of 2003 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Kanchipuram.

For Appellant : Mr.C.Prabakaran

For R1 : Left

For R2 : Mr.C.Ramesh Babu

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.411 of 2003 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Kanchipuram. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,00,000/- for the injuries sustained by her in a road accident on 28.05.2003.

2.The case of the claimant is that on 28.05.2003, at about 9.30 A.M. when the claimant was crossing the road near Munkil Mandapam, a speeding Bolero car bearing Registration No. KA 13 P 101 belonging to the first respondent and insured with the second respondent/New India Assurance Company Limited, hit her, as result of which, she sustained injuries all over her body.

According to the claimant, the rash and negligent driving of the driver of the Bolero car belonging to the first respondent was the cause of the accident and that since the said car was insured with the second respondent/New India Assurance Company Limited, the owner of the car as well as the insurer of the car are jointly and severally liable to pay compensation to her.

3.The first respondent/owner of the vehicle remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, New India Assurance Company Limited, contested the claim petition. The learned Subordinate Judge/Motor Accidents Claims Tribunal, Kanchipuram, while awarding compensation of Rs.37,793/- together with interest at the rate of 7.5% per annum to the claimant also concluded that the second respondent/New India Assurance Company Limited is not liable to pay the compensation, as the claimant negligently attempted to cross the road. 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.C.Prabakaran, learned counsel appearing for the appellant/claimant contended that the Tribunal based on the referred charge sheet filed by the police, came to the conclusion that the claimant was the wrong doer and exonerated the second respondent/New India Assurance Company Limited from paying the compensation amount.

5.A perusal of the records shows that, initially F.I.R. was registered against the driver of the Bolero car bearing Registration No. KA 13 P 101, belonging to the first respondent and the Sub-Inspector of police, Vishnu Kanchi Police Station, Kanchipuram filed a referred charge sheet before the Judicial Magistrate - I, Kanchipuram, treating the case as mistake of fact. In the final report, it is stated that the claimant suddenly crossed the road. However, the final report did not mention that she did not use the pedestrian crossing while crossing the road. Moreover the speed of the offending vehicle is also not indicated. The Tribunal merely based on the final report, fixed the entire negligence on the part of the claimant. Curiously enough, the Tribunal directed the owner of the vehicle, the first respondent to pay compensation to the claimant and exonerated the Insurance Company from paying the compensation. Such an observation made by the Tribunal cannot be sustained. The claimant has also deposed that the driver of the Bolero car was rash and negligent. In the absence of contra evidence on the side of the respondents, the Tribunal was wrong in fixing the negligence on the part of the claimant. It is also relevant to point out that criminal case records alone cannot be the basis for fixing negligence. The manner of the accident and the evidence adduced by the claimant clearly show that the

driver of the first respondent's vehicle was rash and negligent and therefore both the respondents are jointly and severally liable to pay compensation to the claimant. Though the claimant has questioned the award passed by the Tribunal, no arguments were advanced in this regard and a perusal of the orders passed by the Tribunal also shows that a just and reasonable compensation was awarded to the claimant.

6. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The order of the Tribunal exonerating the Insurance Company is set aside.

(iv) The first respondent/owner of the vehicle and the second respondent/New India Assurance Company Limited are jointly and severally directed to pay the compensation. The second respondent/New India Assurance Company Limited, being the insurer of the said vehicle is directed to pay the entire compensation awarded by the Tribunal i.e., Rs.37,793/- (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.411 of 2003 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Kanchipuram within a period of four weeks from the date of receipt of a copy of this order.

(v) 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 V)

//True Copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
Sub Court, Kanchipuram.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.87261

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.87298

C.M.A.No.1229 of 2014

MR(CO)

CS/02/06/2020