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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1536 & 1537 of 2013

C.M.A.No.1536 of 2013

P.Ramesh

..Appellant/Petitioner

C.M.A.No.1537 of 2013

Angammal

..Appellant/Petitioner

Vs.

1. K.Murugesan

2. The National Insurance Company Ltd.,
No.74-A, Paramathi Road,
Namakkal.

..Respondents/Respondents in both cases

Common Prayer: These Civil Miscellaneous Appeal are filed under Section 173 of Motor Vehicles Act, 1988, against the judgments and decree dated 06.09.2006 made in M.C.O.P.Nos.192 & 194 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellants : Mr.C.Thangarasu
(in Both cases)

For R1 : No appearance
(in both cases)

For R2 : Mr.E.Rajadurai for
Mr.M.B.Raghavan
(in both cases)



C O M M O N J U D G M E N T

The appellants in C.M.A.Nos.1536 & 1537 of 2013 are the claimants in MCOP.No.192 & 194 of 2004 dated 06.09.2006, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The brief case of the claimant is as follows:

On 23.11.2003 at about 07.30 hrs at Paramathi Main Road near Nallagoundanpudur diversion road, the claimant namely Ramesh was riding a Hero Honda Splendor Motor Cycle bearing Regn.No.TN-28-H-7124, along with pillion rider, his mother namely Angammal, on the left side of the road, in a slow speed and at that time, a lorry bearing Regn.No.KA-01-B-4525, which is owned by the first respondent, driven by its driver in a rash and negligent manner without observing the traffic rules, hit against the above said Hero Honda Splendor. Due to the said impact, the claimants were thrown out of the vehicle and sustained grievous injuries. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No.KA-01-B-4525 was the cause of the accident and second respondent is the insurer of the vehicle. Therefore, the first and second respondents are jointly and severally liable to pay compensation to the claimants.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the claimants and dismissed the claim petitions filed by the claimants. As against the same, the claimants have come out with the present appeals before this Court.

5.The learned counsel for the claimants would submit that the Tribunal dismissed the claim petitions on the ground that, fixing the negligence against the claimants is against weight of evidence and Exhibits. Hence, it is liable to be enhanced. The Tribunal ought to have considered that at the time of accident, the claimant/ Ramesh is driving a Hero Honda Motor Cycle along



with his mother on the extreme left side of the road, in a slow speed and at that time, the driver of the lorry, which is owned by 1st respondent, came in a rash and negligent manner without observing traffic rules and hit against the two wheeler. Due to the said impact, the accident had happened. But, the Tribunal has failed to consider Ex.P1-FIR and Ex.P5-Charge sheet filed against lorry driver's negligence and as per Ex.P.6, he pleaded guilty of offence. Even then, there is no contra evidence or documents filed by the driver or owner of offending vehicle and also insurance company. Therefore, the findings of the tribunal is unwarranted and it is only based on assumption, surmise and not by any valid evidence or reasons. Hence, it is liable to set aside in limit. The Court below, by wrongly interpreting the M.V.Report and evidence of M.V.Inspector, came into wrong conclusion. It is submitted that if any heavy vehicle is hit against small two wheeler in the back, definitely small vehicle will be thrown out and it may be damaged in front portion of two wheeler. Hence, the findings of tribunal totally misconceived and is liable to set aside. Therefore, the learned counsel for the claimants prays to allow this appeal by granting compensation for the injuries sustained by them in the accident that took place on 23.11.2003.

6.Per contra, learned counsel appearing for the second respondent/insurance company would contend that the tribunal has rightly appreciated the evidence adduced before the trial Court and dismissed the claim petitions filed by the claimants, taking into consideration various aspects and the same need not be disturbed at this juncture.

9.A perusal of the wound Certificate (Ex.P4) shows that the claimant/Ramesh in M.C.O.P.No.192 of 2004 has sustained the following injuries:

"lacerated injury 3 ½ X ½
bone deep on the right side bleeding
small abrasion on the right leg toe and partially disabled"

Ex.P8 Angammal's/claimant in M.C.O.P.No.194 of 2004 wound certificate shows that she sustained the following injuries:

"lacerated injury 4 X ½" into bone deep on the vector & bleeding, lacerated injuries 2 X 1" into bone deep on the right side of the head above the medial aspect of the right eye brow, contusion left shoulder and permanently totally disabled"



10. It is seen that the claimants in M.C.O.P.No.192 & 194 of 2004 have sustained injuries all over their bodies and have taken treatment. The Court below has not awarded any amount to the claimants towards compensation. This Court is inclined to award a sum of Rs.7,500/- towards "medical expenses" and Rs.2,500/- towards "pain and sufferings" in C.M.A.No.1536 of 2013 and awarded a sum of Rs.30,000/- towards "medical expenses" in C.M.A.No.1537 of 2013.

The award passed by this Court is extracted hereunder:

C.M.A.No.1536 of 2013

S.No	Head	Amount granted
1.	Medical expenses	Rs.7,500/-
2.	Pain and sufferings	Rs.2,500/-
Total		Rs.10,000/-

C.M.A.No.1537 of 2013

S.No	Head	Amount granted
1.	Medical expenses	Rs.30,000/-
Total		Rs.30,000/-

Thus, the claimants are entitled to a sum of Rs.10,000/- and Rs.30,000/-, which shall carry interest at the rate of 6% per annum from the date of claim petition till the date of deposit.

12.In the result,

(i)The appeals are allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii)It is made clear that the claimants are entitled to interest only at the rate of 6% per annum for the compensation amount of Rs.10,000/- and 30,000/-.

(iii) The claimants are directed to pay the court fee for the said enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv)The second respondent/insurance company, is directed to pay the entire compensation amount (less the amount already deposited by them) together with interest at the rate of 6% per annum from the date of claim petitions till the date of deposit to the credit of M.C.O.P.Nos.192 & 194 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal, 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 second respondent, the claimants are at liberty to withdraw the same, after following due process of law.

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Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sbn

To

1. Motor Accident Claims Tribunal
Chief Judicial Magistrate,
Namakkal.

Copy to:

The Section Officer,
V.R Section,
High Court, Madras.

+4ccs to M/s.C.Thangaraju, Advocate, S.R.No.8031, 8032

+2ccs to M/s.N.Vijaya Raghavan, Advocate, S.R.No.9149, 9150

C.M.A.Nos.1536 & 1537 of 2013

VGN-II (CO)
SU(04/10/2021)