

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1601 of 2013
and
M.P.No.1 of 2014

C.Kuppusamy

.. Appellant

Vs.

1.Srinivasa Reddy

2.The Divisional Manager,
Oriental Insurance Company Limited,
No.139, 2nd Floor, S.V.Complex,
Eswaran Koil Street, Pondicherry.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.09.2010, made in M.C.O.P.No.1078 of 2003 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Pondicherry.

For Appellant : Mr.D.Govinda Reddy
For R1 : No appearance
For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 07.09.2010, made in M.C.O.P.No.1078 of 2003 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Pondicherry.

2.The appellant is the claimant in M.C.O.P.No.1078 of 2003 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Pondicherry. He filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.06.2003.

3.According to the appellant, on 19.06.2003, at about 01.00 A.M., while he was travelling as a spare driver in the State Express Transport Corporation Bus on Perunthurai - Kovai National Highways, near Karukankattur diversion, the driver of

the van who was driving the van in the opposite direction in a rash and negligent manner, dashed against the bus and caused the accident. In the accident the appellant sustained fracture of right ribs 2, 3, 4 and 5 and multiple injuries all over his body and has taken treatment in the Lotus Hospital, Erode as in-patient from 19.06.2003 to 25.06.2003. At the time of accident, the appellant was working as Driver in State Express Transport Corporation, Chennai Division and was earning a sum of Rs.7,500/- per month and due to the injuries sustained by him in the accident, he is unable to do his work. Therefore, he filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation against the respondents, being the owner and insurer of the van respectively.

4.The 1st respondent-owner of the van remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company being the insurer of the van filed counter statement and denied various averments made by the appellant. According to the 2nd respondent-Insurance Company, the accident has not occurred as alleged by the appellant. The accident has not occurred due to the negligence on the part of the driver of the van belonging to the 1st respondent and also the driver of the van died due to rash and negligent driving by the driver of the bus. The driver of the bus contributed to the accident as the bus was a heavy vehicle than the van and due to the said accident, the driver of the van died. F.I.R. was also registered belatedly against the driver of the van. At the time of accident, the driver of the van belonging to the 1st respondent was not having valid driving license and the 1st respondent's van was not insured with the 2nd respondent-Insurance Company. The appellant has to prove his age, avocation, income, nature of injuries and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.R.V.Krishnakumar was examined as P.W.2 and 21 documents were marked as Exs.A1 to A21. On behalf of the 2nd respondent-Insurance Company, no oral and documentary evidence was let in.

7.The Tribunal considering the pleadings, oral and documentary evidence, held both the driver of the van belonging to the 1st respondent as well as the driver of the bus, in which the appellant was travelling are equally responsible for the accident holding that there had been a head on collision between the bus and van and fixed negligence in the ratio 50% : 50% on

the part of the bus and van and directed the 2nd respondent-Insurance Company, being the insurer of the van belonging to the 1st respondent to pay a sum of Rs.45,500/- towards 50% of the award amount as compensation to the appellant.

8.Challenging the portion of the award fixing 50% contributory negligence on the part of the driver of the bus in which the appellant travelled and for enhancement of compensation awarded by the Tribunal in the award dated 07.09.2010 made in M.C.O.P.No.1078 of 2003, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to consider the oral and documentary evidence let in by the appellant. The Tribunal erred in fixing contributory negligence on the part of the driver of the bus in which the appellant travelled. The complaint was given by one of the passengers in the bus against the driver of the van and F.I.R. was registered against the driver of the van belonging to the 1st respondent. In M.C.O.P.No.278 of 2004 filed by one of the passengers, the Motor Accidents Claims Tribunal, Fast Track Court, Virudhachalam by the award dated 20.04.2005 held that accident has occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent. The Tribunal erred in awarding meagre amounts towards mental agony, extra nourishment, transportation and attendant charges. The Tribunal has not awarded any amount towards loss of earning power. The Tribunal has awarded only a sum of Rs.1,250/- per percentage of disability instead of Rs.2,000/- per percentage of disability and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the driver of the bus in which the appellant travelled and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident has occurred involving two vehicles and it was a head on collision and both the vehicles were damaged. The Tribunal has rightly held that accident has occurred due to rash and negligent driving by both the drivers. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

12.It is the contention of the appellant that while he was travelling as a spare driver in the bus bearing Registration

No.TN 01 N 6618, the driver of the van belonging to the 1st respondent and insured with the 2nd respondent-Insurance Company coming in the opposite direction drove the same in a rash and negligent manner and dashed against the bus and caused the accident. To substantiate the same, the appellant examined himself as P.W.1 and deposed to that effect. He also marked Ex.A1/F.I.R., which was registered against the driver of the van and Ex.A5/final report. The 2nd respondent-Insurance Company has not let in any oral and documentary evidence to disprove the contention of the appellant. The Tribunal fixed 50% contributory negligence on the part of the driver of the bus, in which the appellant travelled on the ground that the appellant has not examined the driver of the bus and accident has occurred involving two vehicles and it was a head on collision. The said finding of the Tribunal is only on presumption and assumption and there is no material on record to come to the said conclusion. One of the passengers who travelled in the bus has filed M.C.O.P.No.278 of 2004 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Virudhachalam and the said Court by the award dated 20.04.2005 held that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent. The Motor Accidents Claims Tribunal, Fast Track Court, Virudhachalam considering the evidence of passenger, who was an eye-witness to the accident, held that accident occurred only due to rash and negligent driving by the driver of the van. In view of the above materials and in the absence of any contra evidence let in by the 2nd respondent-Insurance Company, the finding of the Tribunal fixing 50% contributory negligence on the part of the driver of the bus and deduction of 50% of the award amount is liable to be set aside and it is hereby set aside. The appellant is entitled to entire amount as compensation.

13.As far as quantum of compensation is concerned, P.W.2/Doctor certified that the appellant suffered 40% permanent disability and issued Ex.A19/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.A19/disability certificate, awarded a sum of Rs.50,000/- towards disability by fixing a sum of Rs.1,250/- per percentage of disability. The accident occurred in the year 2003 and the appellant is entitled to a sum of Rs.1,500/- per percentage of disability. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.60,000/- (Rs.1,500/- X 40% of disability). At the time of accident, the appellant was working as Driver in State Express Transport Corporation, Chennai Division and was earning a sum of Rs.7,500/- per month. But he has not filed any material evidence to prove his avocation and income. The Tribunal has awarded a sum of Rs.12,000/- towards loss of income by fixing a sum of Rs.6,000/- per month as

notional income of the appellant. The monthly income fixed by the Tribunal is proper. Due to the injuries sustained by the appellant in the accident, he would not have attended his work atleast for a period of five months. Therefore, the amount awarded by the Tribunal towards loss of income is modified to Rs.30,000/- [Rs.6,000/- X 5 months]. The appellant has taken treatment in the Lotus Hospital, Erode as in-patient from 19.06.2003 to 25.06.2003 and the Tribunal has awarded only a sum of Rs.15,000/- towards transportation, medical expenses and attendant charges. The appellant has produced Ex.A13/medical bills to show that he has spent a sum of Rs.3,456.55 towards medical expenses. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards transportation, medical expenses, attendant charges and extra nourishment are meagre and the same are enhanced to Rs.25,000/- and Rs.5,000/- respectively. The Tribunal has awarded a sum of Rs.10,000/- towards mental agony and pain and sufferings, which is not correct and the appellant is entitled to a sum of Rs.10,000/-each separately towards pain and sufferings and mental agony. The amount awarded by the Tribunal towards damages to clothes is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	50,000/-	60,000/-	Enhanced
2.	Pain and sufferings and Mental agony	10,000/-	10,000/-	Enhanced
3.	Attendant charges, Transportation and Medical expenses	15,000/-	25,000/-	Enhanced
4.	Extra nourishment	3,000/-	5,000/-	Enhanced
5.	Loss of income	12,000/-	30,000/-	Enhanced
6.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	Rs.91,000/-	Rs.1,41,000/-	enhanced by Rs.95,500/- (Rs.1,41,000/- - Rs.45,500/-)
	50% of the award	Rs.45,500/-		

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.45,500/- is hereby enhanced to Rs.1,41,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1078 of 2003 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Pondicherry. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

krk
To

1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Pondicherry.

2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.Govind Reddy , Advocate SR.No. 22243

+1cc to Mr.Chandran , Advocate SR.No. 22070

C.M.A.No.1601 of 2013

A.SK(07.01.2021)