



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.10.2020	Pronounced on: 09.10.2020
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Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.2461 of 2015
& M.P.No.1 of 2015

M/s.National Insurance Company Limited,
Divisional Office,
Perundurai Salai,
Erode - 11.

... Appellant/3rd Respondent

/versus/

1. Mr.R.Velusamy,
S/o.S.Raju,
Door No.23-B, Parakkadu,
East Street, Thanneerpandalpalayam,
Erode. ...Respondent/Claimant
2. Mr.G.Rajendran,
S/o.Gurusamy Nadar,
No.11/121, Chettipalayam,
Periyaseymor Post,
Bhavani Taluk, Erode District. ...Respondent/1st Respondent
3. The President & Correspondent,
Erode Hindu Kalvi Nilayam,
Matric Higher Secondary School,
Hindu Nagar, Mamarathupalayam,
Erode. ...3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2014 in MCOP No.344/13 on the file of the Learned Motor Accident Claims Tribunal (Special Subordinate Judge), Erode.

For Appellant : Mr.J.Chandran

For R1 : Mr.SP.Yuvaraj,

For R2 : exparte

For R3 : No appearance

J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed by the Insurance Company aggrieved by the liability and quantum of compensation awarded by the Motor Accident Claims Tribunal, Erode.

2. The facts of the case is that, on 22.02.2015, the claimant while riding his pulser motorcycle bearing registration No.TN-33-AR-8267 along with one Vignesh proceeding on the Erode to Perundurai road, in front of B-Z world, the 1st respondent school bus bearing registration No.TN-33-P-4970 proceeding ahead of the two wheeler, without proper signal, stopped suddenly. The claimant lost the control and hit against the school bus on the rear left portion and fell down. In the said accident, the claimants sustained injuries in his right leg, knee and eyebrow. Had fracture in his left hand and shoulder bone. A sum of Rs.10,00,000/- sought as compensation for the medical expenses and disability.

3. The claim petition was contested by the Insurance Company on the ground that the negligence for the accident was rash and negligent driving of the two wheeler rider, who without affording necessary safe distance between the on going vehicle and his two wheeler rashly driven his vehicle and dashed. Being the tortfeasor for the accident, the claimant is not entitled for any compensation. There is no evidence to prove the claimant sustained partial permanent disability. The insurer also contended that the accident occurred due to hit and run vehicle. Since F.I.R given by the complainant himself does not mention about the registration number of the offending vehicle.

4. The Tribunal, on considering the rival submission, has held that it is not a hit and run. In the F.I.R itself, the claimant has mentioned that, it was the school bus, which was going ahead of him, stopped suddenly without any reason, was the cause for the accident and he did not notice the registration number of the vehicle.

5. Taking note of the fact that, the injured claimant was 2nd year M.C.A student and the injury sustained by him has caused 34% partial permanent disability. A sum of Rs.2,36,670/- was awarded as compensation, after deducting 25% for his contributory negligence.

6. In the appeal, it is contended that the driving a two wheeler without keeping the safe distance between the on going vehicle amounts to absolute negligence. Relying upon the Hon'ble Supreme Court judgment in Nishan Singh & others Vs. Oriental Insurance Company Limited reported in 2018 (1) TAN MAC 745 (SC), which has held that failure to maintain safe distance

will dis-entitled the vehicle driver to claim compensation, the appellant counsel prayed that the Tribunal award has to be set aside.

7. The Learned Counsel appearing for the respondent/claimant would submit that the Tribunal, after taking note of the facts and on appreciation of the documents has fixed 25% negligence on the part of the claimant and has reduced the compensation by 1/4th. No further interference is required in the award amount.

8. In Nishan Singh case cited by the Learned Counsel for the appellant the accident occurred as a result of collusion of a Maruti car on the rear part of the Truck. The driver of the car, in the cross examination, admitted that, the gap between the Truck and his car was about 10 to 15 feet. The sketch of the accident site indicated that the road was 15 feet width. Therefore, the Hon'ble Supreme Court held that, when there was enough space for negotiating, the car driver has collided with the truck from behind because he has not kept safe distance, specified in the traffic rules.

9. As far as, the facts of the case in hand is concerned, from the motor vehicle inspector Ex.P.10 & Ex.P.11, we find that the front portion of the two wheeler is damaged and the rear left side of the school bus is damaged. This is due to the impact of the motorcycle hitting from behind. The damages noted in Ex.P.10 for the two wheeler is that,

- (i). Front right side petrol tank pressed inside and dented.
- (ii). Left side bumper pressed inside and dented.
- (iii). Electrical cables at accelerator end damaged.

The damages noted in Ex.P.11 for the school bus is that,

- (i). Rear left side corner bumper and body pressed inside and dented.
- (ii). Rear left side red reflector was broken.

10. As per the F.I.R and evidence, while the school bus proceeding from East to West, the claimant in the two wheeler was proceeding behind the school bus in his motorcycle. Since the school bus suddenly stopped, the claimant has attempted to avoid collusion and has taken the extreme left but hit the bus from behind. This was due to not maintaining safe distance.

11. However, it will not totally exonerate the bus owner and his insurer. The accident has occurred on equal contribution. The damage to the vehicle indicates that the claimant has tried to avoid collusion but failed. Therefore, contribution should be apportioned equally. Instead of 75% and 25% fixed by the Tribunal, the liability as against the claimant and the bus driver shall be 50% each.

12. Regarding the quantum of compensation, the Tribunal taking note of the disability certificate given by P.W.2 assessing the disability as 34% awarded a sum of Rs.64,000/- as compensation. The injury sustained by the claimant in the accident was grievous injuries on his right leg, knee, eyebrow, left leg, thigh and left hand. They are not scheduled injury or fractured causing total disability. Therefore, award of Rs.68,000/- stands confirmed. But, the award of Rs.50,000/- for loss of earning capacity and Rs.1,00,000/- for pain and sufferings without any basis and is excessive. Therefore, the quantum under these two heads are reduced. The award of the Tribunal is modified in the award as below:-

Disability (Rs.2,000x34%)	Rs.68,000/-
Pain and sufferings	Rs.25,000/-
Extra Nourishment	Rs.10,000/-
Damage to cloth and vehicle	Rs.1,000/-
Transportation	Rs.4,460/-
Medical Expenses	Rs.82,100/-
Loss of earning capacity during the treatment period (Rs.6,000 x 3)	Rs.18,000/-
Total	Rs.2,08,560/-
Less 50% for the contribution negligence (-)	Rs.1,04,280/-
Total	Rs.1,04,280/-

13. From the record, this Court finds that as an interim measure vide order dated 29.10.2015, this Court has directed the appellant herein to deposit the entire award amount with accrued interest. Therefore, in view of the modification in the award the appellant/Insurance Company is permitted to withdraw the excess amount lying in the Court deposit. The award amount as modified in this appeal is permitted to be withdrawn by the claimant less the amount already withdrawn by him if any, on filing proper application.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified as Rs.1,04,280/- with interest @ 7.5% from the date of filing the petition till the date deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

bsm

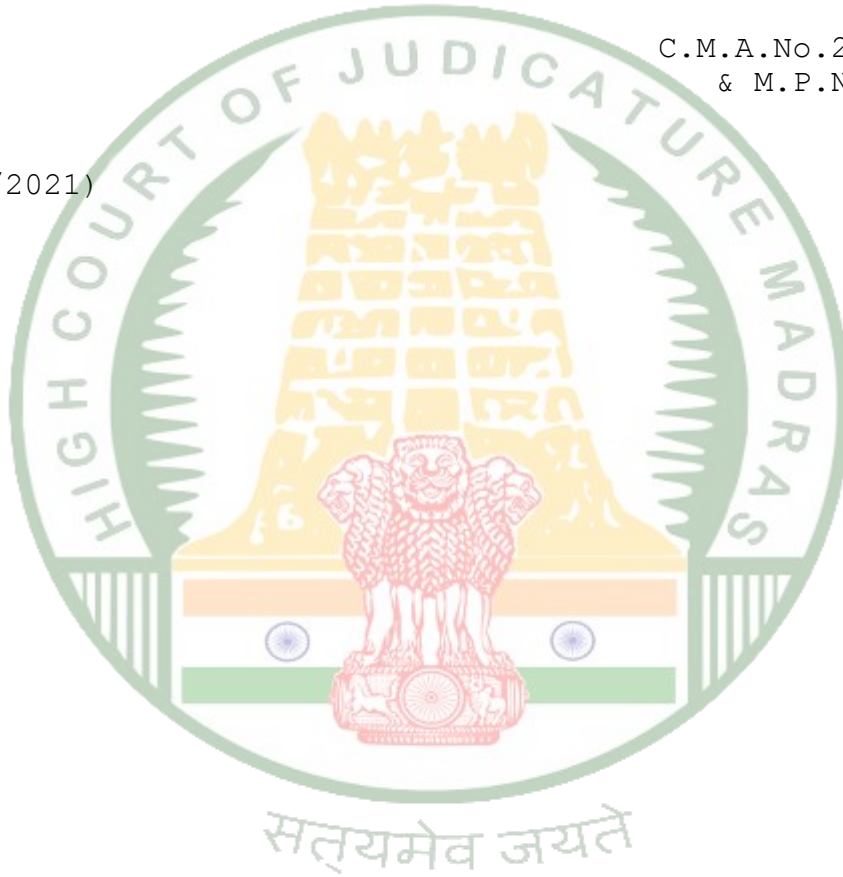
To,

1. The Motor Accident Claims Tribunal
(Special Subordinate Judge), Erode.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.33546

C.M.A.No.2461 of 2015
& M.P.No.1 of 2015

RSV (CO)
GMY (04/05/2021)



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