

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2779 of 2013

Alagesan

.. Appellant/Claimant

Vs.

1. Naina Mohamed

2.The Branch Manager,
United India Insurance Co Ltd.,
No.74, Salai Road,
Trichy.

...Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.393 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court Ariyalur dated 16.07.2012.

For Appellant : Mr.K. Rajasekaran
For Respondent-1 : Served, name printed
(No appearance)
For Respondent-2 : Mr.M. Krishnamoorthy

J U D G M E N T

सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed by the appellant seeking enhancement of the compensation awarded in M.C.O.P.No.393 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court Ariyalur dated 16.07.2012.

2.The appellant is the claimant. The first and second respondents are the owner and insurer of the alleged vehicle involved in the accident.

3.The case of the appellant/claimant is that on 09.05.2007 at about 8.15 p.m when he was proceeding in his motor cycle bearing Registration No: TN-46-7526 from Ariyalur to Kallakurichi, the first respondent's motor cycle bearing Registration No.TN-49-W-9618, came in the opposite direction in a rash and negligent manner and dashed against the motor cycle in which the appellant was proceeding. Due to the impact the appellant sustained head injury and injuries in all parts of the body. The accident occurred due to the rash and negligent driving of the rider of the motor cyclist. Hence he filed a claim petition before the Tribunal, claiming a sum of Rs.5,50,000/- as compensation.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider of vehicle belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the owner of the vehicle/first respondent herein to pay a sum of Rs.2,16,374/- with 7.5% interest as compensation.

5.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant would contend that due to the accident the appellant sustained severe injuries on right side of the head bleeding over ears and nose and other parts of the body. But the Tribunal has not considered the same, while arriving compensation and awarded very low amount as compensation.

7.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellant/rider of the two wheeler does not possess valid driving licence at the time of accident. He would further contend that on a perusal of the narration of the accident, it seems that negligence also exists on the part of the appellant also. Hence, the Tribunal ought to have fixed contributory negligence ought on the part of the appellant. In any event the amount awarded by the Tribunal is highly excessive.

8.Despite serving notice and names printed in the cause list, there is no representation for the first respondent. Hence, considering the paucity of time the main appeal itself is taken up for final disposal, since the disposal of the case will not affect the first respondent in any manner.

9. Heard both sides and also perused all the materials available on record.

10. Before the Tribunal on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and marked 22 documents Ex.P.1 to Ex.P.22. On the side of the respondent two witnesses were marked viz., R.W.1 and R.W.2 and marked 4 documents viz., Ex.R.1 to Ex.R.4.

11. On a perusal of the record, with regard to the negligence aspect, the learned Judge before the Tribunal has raised in point no.1, i.e. Whether the negligence is on the side of the appellant or the first respondent? The said aspect was discussed elaborately. The appellant was examined as P.W.1 and he deposed that the negligence on the part of the rider of the first respondent's vehicle is the cause for the accident. Ex.P.1/F.I.R was also registered against the rider of the first respondent's vehicle. There is no eye witness for the accident. Therefore, the Tribunal arrived at a conclusion that the negligence exists on the side of the rider of the first respondent's vehicle. Therefore, this Court is of the view that the findings rendered on negligence aspect by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence and is perfectly valid in the eye of law and no interference is required.

12. On the side of the respondent's R.W.1/Sivanandam was examined who is working as Junior Assistant in R.T.O office and he

deposed that they have not issued licence to the rider of the first respondent's vehicle. One Krishnaswamy who is the official of the Insurance Company was examined and he deposed that the rider of the first respondent's vehicle does not possess valid driving licence at the time of accident. It is clear that the owner of the two wheeler/first respondent herein has violated the policy conditions by permitting a person to drive the vehicle, who does not possess a valid driving licence. Hence, the Tribunal concluded that the Insurance Company is not liable for compensation and fixed the liability on the part of the owner of the vehicle/first respondent herein.

13. With regard to quantum, considering Ex.P.15/Disability Certificate, which reveals that the appellant had sustained 40% disability and taking the same

percentage as disability and determined Rs.2,000/- per percentage and awarded Rs.80,000/- (Rs.2,000/- x 40%) towards the head disability. Considering Exs.P.8 to Ex.P.22 the Tribunal has awarded Rs.96,374/- towards the head Medical Expenses. Considering the nature of injuries sustained by the appellant the Tribunal has awarded Rs.10,000/- towards Nutritional charges and Rs.30,000/- towards Future Medical Expenses. Thus, the total compensation was quantified at Rs.2,16,374/-

14. In view of the above, this Court on re-appreciating the evidence observed that the Tribunal erred in not awarding compensation towards the head pain and sufferings, hence Rs.25,000/- is awarded towards the same. The amount awarded under the head remains unchanged. Thus, the amount awarded by this Court is tabulated hereunder:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Disability	Rs.80,000/-	Rs.80,000/-
Medical Expenses	Rs.96,374/-	Rs.96,374/-
Additional Medical charges	Rs.30,000/-	Rs.30,000/-
Extra Nourishment	Rs.10,000/-	Rs.10,000/-
Pain and sufferings	-Nil-	Rs.25,000/-
Total	Rs.2,16,374/-	Rs.2,41,374/-

15. The Compensation amount of Rs.2,16,374/- is enhanced to Rs.2,41,374/-.

16. Eventhough, this Court is satisfied with the findings rendered by the Tribunal and is of the considered view that even though the rider of the two wheeler does not posses valid driving license at the time of the accident, the second respondent/Insurance company as the Insurer has to pay the compensation and recover the same from the owner of the vehicle.

17. In the result this appeal is partly allowed and the second respondent/Insurance Company is directed to deposit the amount awarded by this Court at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment and recover from the owner of the vehicle (first respondent). On such deposit being made, the

appellant/claimant is permitted to withdraw the same, after deducting the amount already withdrawn, if any, on making proper application before the Tribunal. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,Ariyalur.

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

+lcc to M. Krishnamoorthy, Advocate SR.No. 1782

C.M.A.No.2779 of 2013

A.SK(28.12.2020)



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