

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3750 OF 2012

Fathima Nachiya

... Appellant/Petitioner

Vs.

1. Shafeek Ahamed

2. United India Insurance Company,
Limited Rep by it's Branch Manager,
Having office at No.123-A, No.2 Road,
Mayiladuturai Town,
Nagapattinam District.

(1st Respondent set exparte before lower
court, Hence Notice may be dispensed with)

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor
Vehicles Act, 1988 against the fair and decreetal order of Motor
Accidents Claims Tribunal (Additional Sub Court),
Mayiladuthurai, dated 21.10.2011 made in M.C.O.P.No.190 of 2007.

For Appellant : Mr.S.Sounthar

For Respondent - 2 : Mr.S.Arunkumar

For Respondent - 1 : RI-Exparte

J U D G M E N T

This Appeal has been filed against the fair and decreetal
order of Motor Accidents Claims Tribunal, Additional Sub Court,
Mayiladuthurai, dated 21.10.2011 made in M.C.O.P.No.190 of 2007.

2. Brief facts of the case is as follows:

On 19.04.2007 when the appellant was travelling in a auto
bearing Registration No.TN-51-D-3057 a bullet bearing
Registration No.TN-04-Z-0916 came in the opposite direction and

dashed against the auto, in which the appellant was travelling. Due to the said impact the driver of the auto as well as the appellant sustained grievous injuries. The accident had happened only due to the rash and negligent riding of the motor cyclist. Hence, the appellant herein filed a claim petition before the Tribunal seeking Rs.2,00,000/- as compensation for the injuries sustained in the road accident. The Tribunal after analysing the materials available on record dismissed the claim petition.

3.As against the dismissal award passed by the Tribunal the claims Tribunal the claimant as appellant is before this Court.

4.Heard the learned counsel for the appellant and the second respondent.

5.The learned counsel submitted that the Tribunal failed to see that the appellant was a passenger in the auto and hence he is entitled to compensation as against the respondent. He further submitted that the Tribunal erred in not even awarding considerable amount under "No fault liability".

6.Per contra the learned counsel for the respondent submitted that the Tribunal has analysed each and every aspect, before awarding compensation. Only after considering all aspects the Tribunal has dismissed the claim petition, which is very reasonable.

7.On a perusal of the impugned award passed by the Tribunal the following issues were framed for consideration:

1. Who is responsible for the accident?
2. Whether the appellant is entitled to compensation and if so how much to be paid and to what extent?

While answering to this issue the Tribunal taking note of the evidence of R.W.1/Insurance Company official, who deposed that the negligence on the part of the motorcyclist is the cause for the accident and Motor vehicles Inspector's report along with Ex.Ps.1,2 and 3 and rendering the finding that the negligence was only on the auto driver and not on the two wheeler which came in the opposite direction. The rider of the two wheeler does not possess valid driving licence at the time of accident. To arrive at a different conclusion than the one arrived by the Tribunal, the respondent had not let in any materials or evidences. The finding of the Tribunal is persuasive and cannot be brushed aside easily.

8.However, the Tribunal failed to take note of the fact that the appellant is entitled to compensation for Rs.25,000/-

under, "No fault Liability". Since the appellant had suffered disability to certain extent, this Court is inclined to award Rs.25,000/- as compensation towards "No fault Liability"

9. In the result, this appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit a sum of Rs.25,000/- as compensation within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount by way of filing appropriate application before the Tribunal. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Mayiladuthurai.
2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.12926
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13763

C.M.A.No.3750 of 2012

SSD(CO)
CS/31/12/2020

सत्यमेव जयते

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