

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4500 of 2019
and
C.M.P.No.24452 of 2019

1.C.Srinivasan
S/o.Chinnasamy ... Appellant/1st Respondent

2.K.Govindaraj
S/o.Krishnan ... Appellant/2nd Respondent

Vs

Manikandan
S/o.Jayaseelan ... Respondent/ Petitioner

Prayer:

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2018 made in M.C.O.P.No.423 of 2017 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Krishnagiri.

For Appellant : Mr.Dhanaram Ramachndran
For Respondents: Mr.M.Sivakumar

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]
[Heard through Video Conference]

This appeal has been filed by the owners of the Car, involved in the accident, challenging the award dated 25.07.2018 made in M.C.O.P.No.423 of 2017 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Krishnagiri.

2. The brief facts of the case is as follows:

Appellants herein are owners of the Car involved in the accident. Respondent is the claimant. On 08.04.2016 at about 07.00 p.m., while respondent was proceeding in his two-wheeler, along with his brother and friend, on the Kaveripattinam - Krishnagiri road, a Car bearing Registration No.TN-24-S-7896 belonging to first appellant being driven by second appellant,

came in a rash and negligent manner and dashed against the two wheeler and as a result of which, the respondent/claimant sustained grievous injuries. Respondent/claimant was riding the two-wheeler and his brother and friend were riding pillion. According to respondent/claimant, he was riding the two-wheeler at a moderate speed keeping on the left side of the road and it was the Car, belonging to appellants, which came in a rash and negligent manner and dashed against the two-wheeler and thus, caused the accident. Respondent/claimant was aged 26 at the time of accident, working at Intel-net Global Service, Ambattur and earning a sum of Rs.25,000/- p.m. and as a consequence of the accident, respondent/claimant suffered permanent disability and hence, he is unable to carry on his avocation. Respondent/claimant filed M.C.O.P.No.423 of 2017 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Krishnagiri, seeking compensation in a sum of Rs.30,00,000/-.

3. The claim petition was resisted by first appellant contending that at the time of accident, respondent/claimant was riding the two-wheeler having two other persons as pillion. All of them were under the influence of alcholol. It is the two-wheeler, which came from the opposite direction in a zigzag manner and dashed against the front portion of the right side of the Car. Therefore, the first appellant cannot be held responsible. In any event, there is contributory negligence on the part of the respondent/claimant. It was the further case of first appellant that he sold the Car to second appellant by way of a business agreement and delivery note dated 25.12.2015. At the time of selling the Car, there was insurance coverage for the Car covering for the period from 20.02.2015 to 19.02.2016. Since the Car was sold, it is the duty of second appellant to renew the insurance. But, the second appellant has not renewed the same. Therefore, the first appellant cannot be held responsible for paying compensation.

4. Second appellant has also resisted the claim petition stating that the accident has occurred only due to the rash and negligent riding of two-wheeler and prayed for dismissal of the claim petition.

5. Before the Tribunal, to prove his case, respondent/claimant was examined as PW-1 and 11 exhibits were marked. On the side of appellants, 2 witnesses were examined and 5 exhibits were marked. Ex.C1 - Disability Certificate was marked by Tribunal. On appreciation of materials, the Tribunal, under judgment dated 25.07.2018, found that though it was the claim of first appellant that he had sold the Car to second appellant, the R.C.Book is still in the name of first appellant. Further, in the criminal case registered in connection with the

accident, second appellant pleaded guilty and paid the fine amount. On the above finding, the Tribunal has arrived at a conclusion that the accident had occurred only due to the rash and negligent driving of the Car belonging to appellants and on the basis of Ex.C1- Disability Certificate, fixed disability at 60% and since no document was marked to prove the income of respondent/claimant, taking note of the fact that respondent/claimant could not do his work as he was doing before, fixed a sum of Rs.20,000/- p.m. as notional income and as respondent/claimant was aged 26 at the time of accident, applied multiplier '17' and awarded compensation as follows:

Sl.N o.	Compensation awarded under the head	Amount (in Rs.)
1.	60% disability [10000*60%*12*17]	24,48,000/-
2.	Medical Bills	4,69,000/-
3.	Transport expenses	40,000/-
4.	Nutrition and attendant charges	25,000/-
5.	Pain and suffering	75,000/-
6.	Future medical expenses	50,000/-
	Total	31,07,000/-

Each of the appellants were directed to pay 50% of the compensation together with interest at 7.5% p.a. from the date of petition till the date of deposit. Challenging the same, appellants have filed the present appeal.

6. Heard learned counsel appearing for appellants and learned counsel appearing for respondent. Perused the materials on record.

7. Learned counsel appearing for appellants submits that at the time of accident, 3 persons were travelling in the two-wheeler, which is in violation of traffic rules. Ex.R4 - photographs of the damaged Car and Ex.R5 - Inspection report of two wheeler would clearly show that it was the two-wheeler, which came in a rash and negligent manner and dashed against the front portion of the right side of the Car. But, the Tribunal, without considering such aspect, has fixed the entire liability on appellants. Submitting as above, learned counsel prays this Court to exonerate appellants from the entire liability to pay the compensation amount. Further, learned counsel has also made an alternative submission that in case, if this Court comes to the conclusion that there is negligence on the part of the driver of the Car, then 50% negligence may be fixed on the rider of the two-wheeler since it was only the two-wheeler, which came

and dashed against the front portion of the Car. With regard to the quantum of compensation, learned counsel submits that in order to prove the income of the victim, absolutely no document was marked by respondent/claimant. Under such circumstance, a sum of Rs.20,000/- fixed by Tribunal as the monthly income of respondent/claimant is not correct. Hence, by fixing a sum lesser than the amount fixed by Tribunal, the award has to be modified.

8. Per contra, learned counsel appearing for respondent/claimant submits that at the time of accident, the Car was driven by second appellant. Charge sheet was also filed against him and he had pleaded guilty and paid the fine amount before the Criminal Court. Hence, the question of fixing contributory negligence on the part of respondent/claimant does not arise. Insofar as quantum is concerned, learned counsel submits that immediately after the accident, respondent/claimant was taken to Government Hospital, Kaveripattinam, wherein the following injuries were found:

- (i) 10 x 13 cm laceration over postero total aspect of right elbow
- (ii) 1 x 2 cm laceration over anterior aspect of right knee
- (iii) Right elbow crush injury with soft tissue defect
- (iv) Right acetabulum and anterior column fracture
- (v) Multiple injuries all over the body.

Respondent/claimant, after taking treatment at Government Hospital, Kaveripattinam, was admitted as an inpatient at SPARSH Hospital, Bangalore, on 09.04.2016 wherein he underwent surgery and was discharged from hospital on 23.04.2016. Learned counsel further submits that the Tribunal, taking note of the fact that respondent/claimant was working at Intel-net Global Services, Ambattur and he could not continue his avocation as he was doing before owing to permanent disability suffered by him, has fixed the monthly income of the deceased at Rs.20,000/-. In such circumstance, the award passed by the Tribunal is just and reasonable and the same need not require any interference by this Court. Submitting as above, learned counsel for respondent/claimant prays for dismissal of the appeal.

9. This Court has considered the rival submissions.

10. On a careful analysis of the materials on record and the judgment under challenge, this Court is of the view that in circumstance where the second appellant himself pleaded guilty in the criminal case and paid the fine amount, the question of fixing contributory negligence on the part of the rider of the two wheeler i.e., respondent herein, does not arise. Therefore, this Court hereby confirms the finding rendered by the Tribunal. Insofar as the quantum of compensation is concerned, though it is the case of respondent/claimant that he was working at Intel-net Global Services, Ambattur, and is unable to carry on his avocation as he was doing before owing to permanent disability

suffered by him, this Court finds that fixing of Rs.20,000/- as the monthly income, in the absence of documentary evidence such as salary certificate, is not sustainable. However, considering the factual aspects of the case, this Court considers it appropriate to fix a sum of Rs.9,000/- as the monthly income of respondent/claimant to arrive at a just and proper compensation. In all other heads, compensation awarded by the Tribunal remains unaltered. Accordingly, the modified compensation is as follows:

Sl.No .	Compensation awarded under the head	Amount (in Rs.)
1.	60% disability [9000*60%*12*17]	11,01,600/-
2.	Medical Bills	4,69,000/-
3.	Transport expenses	40,000/-
4.	Nutrition and attendant charges	25,000/-
5.	Pain and suffering	75,000/-
6.	Future medical expenses	50,000/-
	Total	17,60,600/-

Further, this Court finds that since the registration certificate is still in the name of first appellant and was not transferred in the name of second appellant and the second appellant himself pleaded guilty and paid the fine amount, both appellants are equally responsible to pay the compensation.

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.31,07,000/- awarded by tribunal is hereby reduced to Rs.17,60,600/-. Each of the appellants are directed to pay 50% of the amount, less the amount already deposited, together with interest at 7.5% p.a., within a period of eight weeks from the date of receipt of this judgment. On such deposit being made, respondent/claimant is entitled to receive the same on due application. No costs. Connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Krishnagiri.

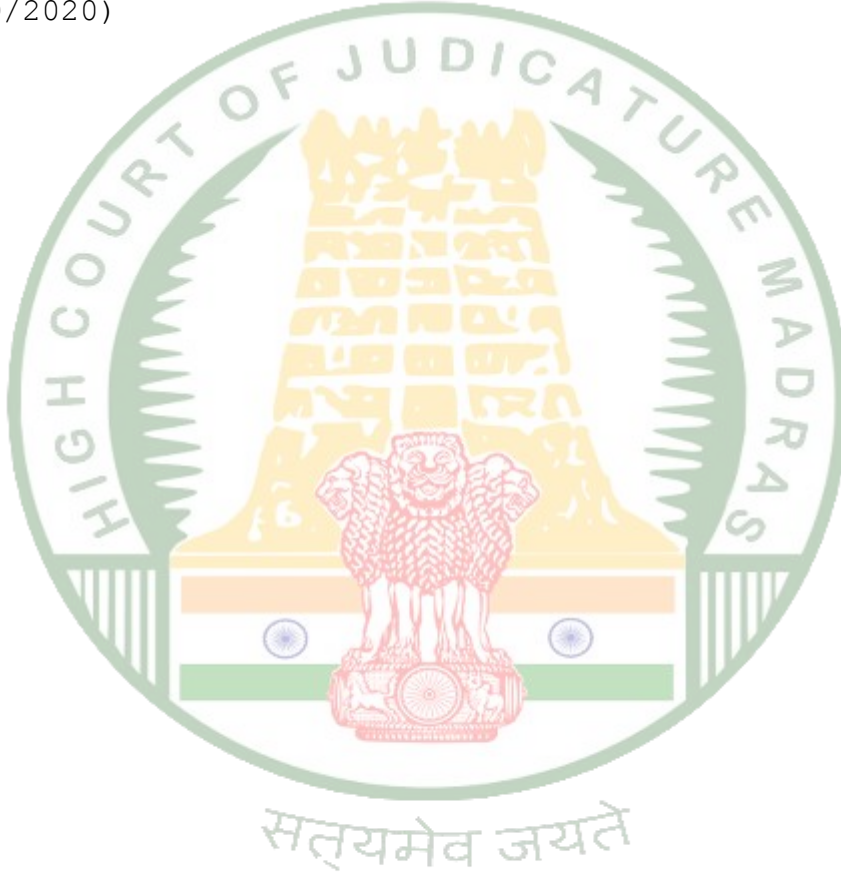
Copy to:

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

+lcc to Mr.C.Prabhakaran , Advocate SR.No. 25231

C.M.A.No.4500 of 2019

A.SK(08/09/2020)



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