

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.09.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2114 of 2017

Shemin Kookkiri ... Appellant /Claimant

Vs

1.Sudha Srinivasan

(Ex-parte before the Tribunal)

2.The New India Assurance Co., Ltd.,

Third Party Cell, 5th Floor,

No.45, Moore Street,

Chennai - 600 001.

... Respondents/Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.01.2017 made in MACT. O.P. No.3615 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2, Small Causes Court), Chennai.

For Appellant : Mr. C. Munusamy

For Respondents: Mr.G.Udaya Sankar for R2
R1 - Ex-parte

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (Special Sub Court No.2, Small Causes Court), Chennai, vide award dated 31.07.2017 passed in MACT.O.P. No.3615 of 2011, the instant appeal has been filed by the appellant / claimant seeking enhancement of the same.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The appellant sustained injuries as a result of an accident caused by the Tata Sumo Car bearing Reg.No.TN-10-R-9282 owned by the first respondent and insured with the second respondent. The appellant preferred a claim petition before the Tribunal seeking compensation of Rs.6,00,000/-.

(ii)The Tribunal by its Award dated 31.01.2017, directed the second respondent to pay the appellant a sum of Rs.3,65,625/- together with interest at the rate of 7.5% per annum [except Future Medical Expenses i.e., Rs.1,25,000/- (50% on

Rs.2,50,000/-)] from the date of claim till the date of realisation.

3. Aggrieved by the same, the present appeal has been filed by the appellant/ claimant.

4. The learned counsel for the appellant/claimant has submitted that the Tribunal has erred in fixing 50% negligence on the part of the rider of the motorcycle. It is also submitted that the compensation awarded by the Tribunal is meagre compared to the injuries suffered by the claimant and hence, the same requires substantial enhancement.

5. Per contra, the learned counsel appearing for the second respondent/ Insurance company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the compensation, which is nothing but just and has correctly fixed 50% negligence on the part of the rider of the motorcycle and hence no interference is required at the hands of this Court.

6. Heard both the sides and perused the materials available on record, carefully.

7. With regard to the aspect of negligence, the Tribunal has observed that though the owner of the Tata Sumo car remained ex-parte before the Tribunal, during the course of cross-examination by the second respondent Insurance Company, the claimant as P.W.1, deposed that since it was about 12'0 Clock, there were no red and green signals, but yellow light was dazzling. The Tribunal has further observed that once there was only yellow signal, the rider of the motorcycle in which the claimant was travelling as pillion rider, ought to have been careful and only after confirming that there was no vehicle on the road, he should have crossed the road. Since there was no evidence adduced to show that on which side of the road the accident occurred, taking note of the facts of the case and the manner in which the accident took place, the Tribunal has rightly fixed 50% liability on the rider of the motorcycle and 50% on the driver of the Tata Sumo Car, since the car driver was not able to stop his vehicle on seeing the motorcycle crossing the road. This Court is not inclined to interfere with such factual finding arrived at by the Tribunal.

8. As far as the quantum of compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, treatment records of the injured, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads

are reasonable and justifiable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal filed by the appellant/ claimant stands dismissed. No costs. The second respondent / Insurance Company shall deposit the compensation amount as awarded by the Tribunal, ie., Rs.3,65,625/- with interest at the rate of 7.5% per annum [except Future Medical Expenses i.e., Rs.1,25,000/- (50% on Rs.2,50,000/-)] from the date of claim petition, after deducting the amount if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Motor Accidents Claims Tribunal,
(Special Sub Court No.2, Small Causes Court),
Chennai.

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

+1cc to Mr.G.Udaya Shankar, Advocate, S.R.No. 28588

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C.M.A.No.2114 of 2017

RSV(CO)
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