



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1979 of 2020

P.Nagarajan

.. Appellant/Petitioner

Vs.

1.P.Sathishkumar

(R1 remained exparte before the Tribunal)

2.Reliance General Insurance Co. Ltd.,

Rai's Tower, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar,
Chennai 600 040.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.09.2019, made in M.C.O.P. No.714 of 2014, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mrs.A.Subadra
for M/s.M.Malar

For Respondent : Mr.C.Bhuvanasundari (For R2)
R1-Exparte

J U D G M E N T

This appeal has been filed challenging the portion of the award fixing negligence on the appellant as well as not being satisfied with the amount awarded by the Tribunal in the award dated 06.09.2019, made in M.C.O.P. No.714 of 2014, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.714 of 2014, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.7,00,000/- as



compensation for the injuries sustained by him in the accident that took place on 22.12.2013.

3. According to the appellant, on the date of accident, when he was riding a Motorcycle bearing Registration No. TN-22-AF-4673 along with his son as pillion rider at Kundrathur main road, near Veterinary Hospital, Somangalam, Kancheepuram District, rider of another Motorcycle bearing Registration No. TN-11-D-3949 belonging to the 1st respondent rode the same in a rash and negligent manner on the opposite direction and hit against the Motorcycle rode by the appellant and caused the accident. The accident occurred only due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent. Hence, the appellant filed the claim petition claiming compensation against the respondents as owner and insurer of the offending vehicle respectively.

4. The 1st respondent, owner of the Motorcycle, remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the counter statement. According to the 2nd respondent, the accident occurred due to rash and negligent riding by the appellant, who rode the Motorcycle with two pillion riders, in violation of policy conditions. The claim petition is bad for not impleading the owner and insurer of the Motorcycle rode by the appellant. In any event, both the appellant as well as the rider of the Motorcycle belonging to the 1st respondent did not possess valid driving license to ply their vehicles at the time of accident. The appellant has to prove the age, avocation and income, injuries sustained, treatment taken and disability suffered by him to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and marked 12 documents as Exs. P1 to P12. The 2nd respondent examined their Official as R.W.1 and marked 4 documents as Exs. R1 to R4. The disability certificate of the appellant was marked as Ex. C2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent and fixed 90% negligence on the rider of 1st respondent's Motorcycle and 10% contributory negligence on the part of the appellant for not possessing valid driving license to ply the vehicle at the time of accident. The Tribunal awarded a sum of Rs. 1,82,014/- and directed the 2nd respondent-Insurance



Company to pay a sum of Rs.1,64,000/- being 90% of the award amount, as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner.

8. Challenging the portion of the award fixing 10% contributory negligence on the part of the appellant as well as not being satisfied with the amounts awarded by the Tribunal in the award dated 06.09.2019, made in M.C.O.P. No.714 of 2014, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the appellant sustained injuries like fracture of shaft right femur and right patella. He has taken treatment as in-patient at Sri Ramachandra Hospital from 24.12.2013 to 02.01.2014. The appellant was referred to the Medical Board. The Medical Board examined the appellant and certified that the appellant suffered 10% disability. The disability assessed by the Medical Board is very low. The Tribunal accepted the disability and granted only a sum of Rs.30,000/- towards disability. The appellant was working as a Sales Manager in Key Furniture and was earning a sum of Rs.23,500/- per month. The Tribunal erroneously fixed only a sum of Rs.10,000/- per month as notional income for the accident of the year 2014. The Tribunal ought to have granted more compensation for pain and suffering, transportation, extra nourishment and medical expenses and awarded compensation for loss of earning power by adopting multiplier method. The learned counsel appearing for the appellant filed additional grounds, challenging 10% contributory negligence fixed on the appellant and contended that the Tribunal having held that accident occurred only due to rash and negligent riding by rider of the Motorcycle bearing Registration No.TN-11-3949, belonging to the 1st respondent, erroneously fixed 10% contributory negligence on the appellant on the ground that he did not possess driving license and prayed for setting aside the 10% contributory negligence and for enhancement of the compensation.

10. In support of her contentions, the learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court reported in 2018 (1) TN MAC 34 (SC) [Dinesh Kumar, J. @ Dinesh, J. Vs. National Insurance Co. Ltd. and others], wherein it has been held as follows:

"7. Both the tribunal, and in appeal in the High Court, have found fault with the appellant for not having produced his driving licence. The tribunal noted that the appellant had admitted in the course of his cross-examination that the road where the accident took place was a two way road and that on each side, three vehicles could pass



WEB COPY

at a time. A suggestion was put to the appellant that while trying to overtake another vehicle, he had approached the offending lorry from the right side as a result of which the accident took place. The appellant denied the suggestion. The award of the tribunal indicates that absolutely no evidence was produced by the insurer to support the plea that there was contributory negligence on the part of the appellant.

8. Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on 1 (2008) 12 SCC 436 the part of the appellant is held to be without any basis, the second aspect which weighed both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this Court in Sudhir Kumar (supra) where it was held as follows :

"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence...

10. The matter might have been different if by reason of his rash and



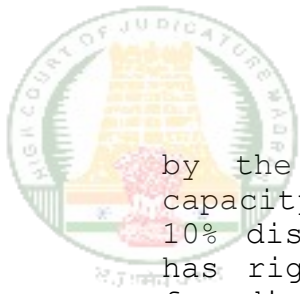
negligent driving, the accident had taken place."

11. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident has occurred in the middle of the road and it is a head on collision. The Tribunal considering the manner of accident, fixed 10% contributory negligence and the same is correct. The appellant failed to prove his avocation and income. In the absence of any materials, the Tribunal fixed the notional income of the appellant as Rs.10,000/- per month. The Medical board after examining the appellant, fixed the disability at 10%. The appellant has not let in any evidence to prove that he suffered loss of earning power and hence, he is not entitled to any amount towards loss of earning power. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent through video conference and perused entire materials available on record.

13. From the materials on record, it is seen that the appellant has not produced his driving license before the Tribunal. Driving a vehicle without driving license is an offence and practicing of driving a vehicle must be deprecated. The case of the learned counsel appearing for the appellant with regard to fixing 10% contributory negligence on the part of the appellant is concerned, the Hon'ble Apex Court in the judgment reported in 2018 (1) TN MAC 34 (SC) (referred to above), held that mere failure to produce the driving license is not sufficient to draw adverse inference in respect of contributory negligence and non-production of driving license by claimant is of no consequence and set aside the contributory negligence fixed. The ratio in the said judgment is squarely applicable to the facts of the present case and the 10% contributory negligence fixed on the appellant is liable to be set aside and is hereby set aside. The appellant is entitled to entire compensation awarded by the Tribunal.

14. It is the case of the appellant that in the accident, he suffered injuries like fracture of shaft right femur and right patella, he was referred to the Medical Board and the Medical Board after examining the appellant, certified that he suffered 10% disability. The disability assessed by the Medical Board is very low. The appellant has not examined any Doctor to prove that he suffered more than the percentage of disability assessed



by the Medical Board and that he suffered loss of earning capacity. Hence, he is not entitled to compensation more than 10% disability and by adopting multiplier method. The Tribunal has rightly adopted percentage method and granted compensation for disability. The appellant has taken treatment as in-patient at Sri Ramachandra Hospital from 24.12.2013 to 02.01.2014, for a period of 10 days. Considering the period of treatment taken by the appellant, the sum of Rs.3,000/- granted by the Tribunal towards attendant charges is meagre and the same is enhanced to Rs.10,000/-. The appellant claimed that he was working as a Sales Manager in Key Furniture and was earning a sum of Rs.23,500/- per month. He failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income. The accident is of the year 2014. The monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the appellant, a sum of Rs.12,000/- per month is fixed as notional income. The Tribunal has granted a sum of Rs.30,000/- for loss of income. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of 5 months. Hence, the compensation granted by the Tribunal towards loss of income is enhanced to Rs.60,000/- [Rs.12,000/- x 5 months]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	40,000/-	40,000/-	Confirmed
2.	Transportation and extra nourishment	30,000/-	30,000/-	Confirmed
3.	Disability	30,000/-	30,000/-	Confirmed
4.	Loss of income	30,000/-	60,000/-	Enhanced
5.	Attendant charges	3,000/-	10,000/-	Enhanced
6.	Loss of amenities	30,000/-	30,000/-	Confirmed
7.	Medical expenses	19,014/-	19,014/-	Confirmed



WEB COPY

Total	1,82,014/-	2,19,014/-	Enhanced by
90% of the award amount	1,63,812.60/-	rounded off to	Rs.55,000/-
	rounded off to	2,19,000/-	(Rs.2,19,000 -
	1,64,000/-		Rs.1,64,000)

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,82,014/- is enhanced to Rs.2,19,000/-, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.714 of 2014, at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the entire award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Motor Accident Claims Tribunal,
The V Judge,
Court of Small Causes,
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Ms.M.Malar, Advocate, S.R.No.8633

C.M.A.No.1979 of 2020

RGN(CO)
CB(22/09/2021)