



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.290 of 2017

Saravanan @ Paul Saravanan

... Appellant

Vs

1. O.Yogesh
(R1 remained exparte before the Tribunal,
hence his presence may be dispensed with)

2. Oriental Insurance Co. Ltd.,
No.115/116, Second Floor,
Oriental House,
Prakasam Salai, Broadway,
Chennai 600 108.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.04.2016 made in M.A.C.T.O.P.No.7277 of 2013 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For Respondents : Mrs.Elveera Ravindran for R2
R1-Exparte

J U D G M E N T

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

2. The appeal is filed by the claimant being aggrieved by the fact that the Tribunal has fixed 50% contributory negligence on his part and reduced the award by 50% and further more, no adequate compensation was granted for the disability.

3. The facts of the case is that on 04.08.2013 at about 09.50 p.m., when the appellant/claimant tried to cross the road in between Gandhi Mandapam and Anna University, a pulsar motor cycle bearing Registration No.TN 11X4091 dashed against him



causing fractured injury. The claimant was admitted in the hospital for the injuries and treated at Government Royapettah hospital and shifted to a private hospital. The claim petition seeking compensation of Rs.10,00,000/- against the owner of the two wheeler and its insurer was made before the MACT, Chennai.

4. The Tribunal on considering the claim and the counter filed by the Insurance Company, after appreciating the evidence, has fixed compensation of Rs.3,65,000/-, out of which 50% was reduced for the contributory negligence.

5. Learned counsel appearing for the appellant submitted that the Tribunal erred in relying upon the sketch marked as Ex.R1 to hold that the claimant has contributed for the accident. Relying upon the judgment of the Supreme Court rendered in Jiju Kuruvila vs. Kunjuamma Mohan, 2013(4) CTC 252, the learned counsel for the appellant/claimant submitted that the rough sketch marked as Ex.R1 and relied by the Tribunal to apportion contribution is not a substantive proof. Further, relying upon the judgment of the Supreme Court in Bimla Devi vs. Himachal Road Transport Corporation, 2009 (1) TNMAC 700 (SC), the learned counsel submitted that the standard of proof in case of accident claim should be preponderance of probability and not strict proof. Having proved that the claimant has sustained injury in the road accident and the offending vehicle is the motor cycle insured under the second respondent, the Tribunal ought not to have deducted towards negligence.

6. Per contra, learned counsel appearing for the Insurance Company submitted that the claimant P.W.1 during the cross-examination had accepted the details found in Ex.R1 is correct. He has accepted that the spot on which he crossed the road there was a median and there was no provision for pedestrian cross. Learned counsel submitted that the admission of the claimant coupled with rough sketch Ex.R1 show enough material that when the pedestrian cross near the signal is several feet away from the scene of accident, the claimant, who crossed the road negligently, had invited the accident and therefore, deduction of 50% towards contributory negligence is proper and based on the record.

7. This Court after giving anxious consideration to the rival submission, considering the deposition of the claimant as well as Ex.R1 find that the conclusion of the Tribunal regarding the quantum of compensation and the contribution of the claimant for the accident is based on evidence and need no interference except the percentage of contribution. The photographs marked as Ex.P5, the Disability Certificate marked as Ex.P8, the rough sketch marked as Ex.R1, the admission of the claimant regarding the spot of accident on cumulative assessment



lead to conclusion by preponderance of probability that the injury sustained by the claimant has caused 35% disability. The accident has occurred due to the contributory negligence of the claimant. Instead of crossing the road from the area marked for pedestrian cross, the claimant has attempted to cross the road non pedestrian area and had invited the accident. However, the only point which needs interference is the percentage of contribution. The rough sketch indicates that had the victim or the motor vehicle rider vigilant about the object upcoming, they could have averted the accident. Having failed to do so, evitable has occurred. Instead of fixing 50% contribution on the part of the claimant, this Court reduces his contribution to 25%.

8. Accordingly, the compensation is modified from Rs.1,82,500/- to Rs.2,73,750/- with 7.5% interest from the date of numbering the petition i.e.,05.12.2013 till the date of deposit. The Insurance Company shall deposit the money within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, the claimant is permitted to withdraw the same on appropriate application.

9. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Deputy Registrar(LA)

//True Copy//

Sub Assistant Registrar

vri

To

1. Motor Accidents Claims Tribunal
V Court of Small Causes,
Chennai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No.6114

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.5959

CMA NO.290 OF 2017

GP(CO)
HS(15/09/2021)