



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.06.2021

Delivered on : 02.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) No.1070 of 2013

WEB COPY

S.Ramadas ... Appellant / Petitioner

Vs.

1.M.Prabhudhas

2.The Principal,
Pearl Matriculation School,
Puthugramam,
Therekalputhooor,
Nagercoil.

3.The Reliance General Insurance Co.Ltd.,
Tirunelveli.

4.Kumar

5.The Manager,
National Insurance Co. Ltd.,
Nagercoil.

6.C.David

7.The Manager,
Oriental Insurance Company Ltd.,
Nagercoil.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehilces Act, 1988, against the judgment and decree made in M.C.O.P.No.310 of 2009, on the file of the Motor Accident Claims Tribunal - First Additional Sub Court, Nagercoil, dated 29.02.2012.

For Appellant	: Mr.T.Selvakumaran
For R3	: Mr.V.Sakthivel
For R5	: Mr.R.Srinivasan
For R7	: Mr.C.Jawahar Ravindran
R4	: Dismissed
For R1, R2 & R6	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.310 of 2009, on the file of the Motor Accident

<https://hcservices.ecourts.gov.in/hcservices/>



Claims Tribunal - First Additional Sub Court, Nagercoil, dated 29.02.2021 and to enhance the award amount.

2.The appellant herein is the claimant and the respondents herein are the respondents in M.C.O.P.No.310 of 2009. The appellant / claimant filed the M.C.O.P. Petition before the Tribunal claiming a compensation of Rs.3,00,000/- (Rupees Three Lakhs only) for the injuries sustained by him in a road accident.

3.Brief substance of the petition in M.C.O.P.No.310 of 2009, is as follows:-

The claimant was working as an Auto driver in a load Auto bearing Registration No.TN-74-W-4304. On 24.12.2007, at about 03.30 am., when the claimant was taking goods in the Auto, the first respondent to check up the vehicle / School Van bearing Registration No.TN-74-L-8248, after service, drove the vehicle in a rash and negligent manner and stopped it near Pensam Hospital by applying sudden brake. At that time, the fourth respondent drove his two wheeler viz., Hero Honda bearing Registration No.TN-74-W-9194, trying to overtake the vehicle of the claimant and to avoid dashing against the opposite of the vehicle, was turned by its driver vehicle and hit the front side of the claimant's Auto. Due to that impact, the Auto hit the vehicle of the first respondent. The claimant sustained injuries and he took treatment. He sustained fracture and other injuries. The accident has occurred due to the rash and negligent driving of the first and fourth respondents. Since the claimant was unconscious, at that time, the fourth respondent lodged the complaint and an F.I.R was wrongly registered against the claimant. But, the claimant was acquitted by the Criminal Court. The claimant undergone treatment as inpatient for ten days. The claimant has to remove the plate and screw fixed and he has to undergo another surgery for the same and the claimant claim a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent in M.C.O.P.No.310 of 2009, is as follows:-

The first respondent is not responsible for the accident. The first respondent is not a necessary party. The claimant drove the Auto in a rash and negligent manner and dashed against the back side of the first respondent's vehicle, which was parked and hence, the first respondent is not liable to pay any compensation.

5.Brief substance of the counter filed by the second respondent in M.C.O.P.No.310 of 2009, is as follows:-

The vehicle was insured with the third respondent. The Insurance Policy is active at the time of accident. The first respondent did not drive the vehicle in a careful and cautious manner and he

<https://hcservices.nagpur.gov.in/hcservices/>



has having a valid driving licence. The second respondent is not liable to pay any compensation.

6.Brief substance of the counter filed by the third respondent in M.C.O.P.No.310 of 2009, is as follows:-

The mode of accident and the nature of injuries are to be proved by the claimant. The quantum claimed is excessive and prayed the petition to be dismissed.

7.Brief substance of the counter filed by the fourth respondent in M.C.O.P.No.310 of 2009, is as follows:-

The fourth respondent is not a necessary party to the petition. The claimant drove the Auto in a rash and negligent manner and he only invited the accident. It was the claimant, who hit the fourth respondent's vehicle from the back side. The fourth respondent is not responsible for the accident and is not liable to pay any compensation.

8.Brief substance of the counter filed by the fifth respondent in M.C.O.P.No.310 of 2009, is as follows:-

The First Information Report, Seizure Mahazar, Rough Sketch, would reveal that the accident occurred only due to the negligence of the claimant. The claimant has to prove the mode of accident and nature of injuries. The fifth respondent is not liable to pay any compensation.

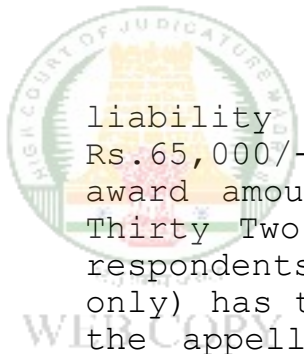
9.Brief substance of the counter filed by the sixth respondent in M.C.O.P.No.310 of 2009, is as follows:-

The vehicle was insured with the seventh respondent and the policy was in force. The sixth respondent is not liable to pay any compensation.

10.Brief substance of the counter filed by the seventh respondent in M.C.O.P.No.310 of 2009, is as follows:-

The seventh respondent is not a necessary party to the petition. The accident took place only due to the rash and negligent driving of the claimant. The claimant has to prove his age, income, disability and medical expenses. The claimant is not having Badge to drive the load vehicle. The claim is too excessive and prayed the petition to be dismissed.

11.After trial, the Tribunal has fixed 1/3rd Contributory negligence on the part of the claimant and has decided that the respondents 1 to 5 are liable to pay compensation for 2/3rd liability and fixed the award amount at Rs.97,500/- (Rupees Ninety Seven Thousand Five Hundred only). Out of the same, the fixed the



liability on respondents 1 to 5 to pay a sum of Rs.65,000/- (Rupees Sixty Five Thousand only), towards 2/3rd of the award amount. Out of this, (i.e. Rs.65,000), Rs.32,500/- (Rupees Thirty Two Thousand and Five Hundred only) has to be paid by the respondents 1 to 3 and (Rupees Thirty Two Thousand and Five Hundred only) has to be paid by the respondents 4 and 5. Against the order, the appellant / claimant has preferred this Civil Miscellaneous Appeal claiming for enhancement of compensation.

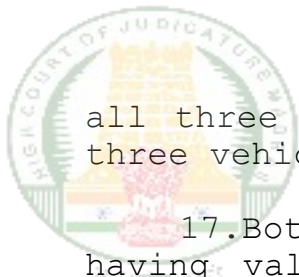
12.On the side of the appellant, it is stated the the Tribunal is wrong in fixing the Contributory negligence on the part of the appellant. At least six months loss of income for the period of treatment has to be given and compensation for extra nourishment and pain and suffering has to be enhanced. In total award amount should be fixed as Rs.1,00,000/- (Rupees One Lakh only).

13.On the side of the appellant, it is further stated that the Tribunal is wrong in fixing 1/3rd liability on the appellant. The Tribunal failed to consider the fact that after the accident the appellant was unconscious and the complaint was lodged only by the Van driver. The First Information Report and the Charge Sheet were filed, based on the complaint. But, the appellant was acquitted by the Criminal Court. There was no evidence on the side of the respondents 1 and 4. The respondents side witness R.W.1 was not an eyewitness. The First Information Report is not a piece of evidence and the appellant is not responsible for the accident.

14.On the side of the respondents, it is stated that the School Van was hit by the Auto from the back side. Even in the claim petition, the claimant has also admitted that the fourth respondent drove the two wheeler and suddenly hit the front side of the Auto. Due to that impact, the Auto hit the back side of the Van. There was damages only on the back side of the van. There was no negligence on the part of the respondents. The Tribunal has wrongly fixed the liability on the van driver.

15.The claim of the claimant is that brake wire was damaged due to hit of the two wheeler on the front side of the Auto. The Motor Vehicle Inspection Report was marked as Ex.P2 to Ex.P4. The claimant was acquitted by the Criminal Court and the Judgment was marked as Ex.P10. Considering the fact that there was damages only on the back side of the van, the Tribunal has come to the conclusion that the claimant, the Van driver, and the rider of the two wheeler are all responsible for the accident and fixed the liability as 1/3rd for each of them.

16. The case of the claimant is that the Van driver suddenly applied the brake and the fourth respondent hit the Auto and in turn, the Auto hit the Van. Considering the fact that the Van was damaged only on the rear side and that the two wheeler was damaged on the front side, the Tribunal has fixed the liability as 1/3rd for each of them. The liability fixed by the Tribunal is correct. So,



all three vehicles involved in the accident and the driver of all three vehicles are responsible for the accident.

17.Both the Van driver and the rider of the two wheeler are having valid driving licence and both the vehicles are insured. There is no dispute regarding the Insurance Policy.

18.On the side of the appellant, it is stated that the quantum fixed by the Tribunal is very low. The appellant has undergone surgery and one more surgery is needed for removing the plate and screw and that the appellant took treatment as inpatient for ten days and that the Doctor has fixed the disability as 8%. The Disability Certificate was marked as Ex.P13. The Tribunal has fixed a sum of Rs.16,000/- (Rupees Sixteen Thousand only) for the 8% of disability sustained by him.

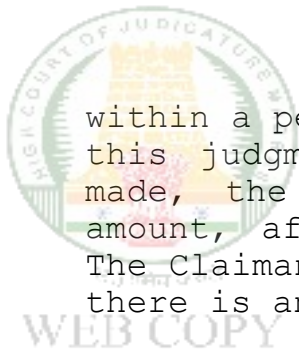
19.On the side of the appellant, it is stated that a sum of Rs.3,000/- (Rupees Three Thousand only) for each percentage of disability has to be fixed. This accident has taken place in the year 2007 and the amount fixed for the disability, at that time, is reasonable.

20.On the side of the appellant, it is stated that the Tribunal failed to consider that the appellant has undergone surgery and he has to undergo another surgery and he was inpatient for ten days and has awarded only a sum of Rs.20,000/- for pain and sufferings and prayed the amount to be enhanced Rs.50,000/-. Already compensation was awarded for the disability and the amount fixed by the Tribunal for pain and suffering is reasonable.

22.The appellant has claimed a sum of Rs.52,000/- (Rupees Fifty Two Thousand only) towards medical expenses, but, the Tribunal has awarded only Rs.50,000/- (Rupees Fifty Thousand only). Hence, it is decided that the appellant is entitled to Rs.51,500/- (Rupees Fifty One Thousand Five Hundred only) as medical expenses. It is decided that the appellant is entitled to Rs.99,000/- (Rupees Ninety Nine Thousand only) as compensation.

23.In the result, this Civil Miscellaneous Appeal is partly allowed. The award passed in M.C.O.P.No.310 of 2009, on the file of the Motor Accident Claims Tribunal - First Additional Sub Court, Nagercoil, dated 29.02.2021, is hereby enhanced from Rs.97,500/- to Rs.99,000/-.

10. The Contributory negligence on the part of the claimant as 1/3rd liability is confirmed. The respondents 1 to 3 are directed to deposit Rs.33,000/- (Rupees Thirty Three Thousand only) and the respondents 4 and 5 are directed to deposit Rs.33,000/- (Rupees Thirty Three Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and cost



within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the entire award amount, after deducting amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal -
First Additional Sub Court, Nagercoil.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-21165[F] dated 05/07/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-21162[F] dated 05/07/2021)

C.M.A(MD)No.1070 of 2013
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