**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	18.01.2021
Date of Judgment	23.03.2021

CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.370 of 2016andCMP(MD)No.5296 of 2016

1.The District Collector,
District Collector Office,
Nagapattinam.

2.Regional Joint Director,
Animal Husbandry,
No.T9, 1309, Public Office Road,
Velipalayam,
Nagapattinam.

: Appellants/Respondents

Vs.

Hariprasadh @ Harikrishnan

: Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 08.12.2015 made in MCOP No.262 of 2013 on the file of Motor Accident Claims Tribunal (Special District Court), Thanjavur.

For Appellants
For Respondent

: Mr.J.Gunaseelan Muthiah, AGP
: No appearance

JUDGMENT

Challenge made in this appeal is to the award, dated 08.12.2015 made in MCOP No.262 of 2013 on the file of Motor Accident Claims Tribunal (Special District Court), Thanjavur.

2.The brief facts of the case are that on 09.01.2013 at about 12.30 pm, the claimant was proceeding to his house along with his friends Rajesh and Rajendran by bicycle separately. While they were riding in Nagapattinam Road near Kadampadi A.D.J Polytechnic Hospital, the Department vehicle TN-51-G-0335 coming from south to north direction in a rash and negligent manner and hit against the bicycle driven by the claimant. Due to it, the claimant sustained injuries. The claimant, sought compensation of Rs.10,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.1,97,000/- with interest @ 9% p.a. Aggrieved by the award of the Tribunal. Challenging the same, the appellants are before this court.



4. Heard the learned counsel appearing for the appellant and perused the materials available on record. Even though, sufficient opportunity was given, there is no representation on the side of the respondent.

5. The dispute is in respect of negligence and quantum. The learned counsel appearing for the appellants/respondents submitted that the accident was happened due to the negligence of the claimant, since he crossing the road from west to east without observing the road rules and sense and he is using and talking in cell phone, therefore, he dashed on the right side wheel of the jeep, which came on the left side of the road and at the time of accident, the claimant crossing the road by walk and not riding the bicycle and hence, the accident occurred only due to the negligent on the part of the injured claimant and hence, the appellants are not liable to pay the compensation.

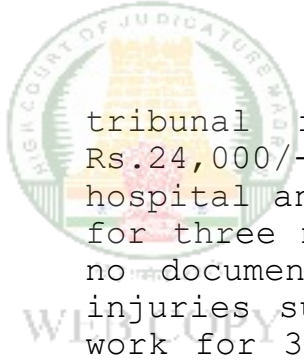
6. Per contra, on the side of the 1st respondent/claimant, it is stated that the accident occurred only due to the rash and negligent driving of the Department vehicle driver and FIR also registered as against the driver of the appellants and hence, the appellants are liable to pay the compensation to the claimant.

7. In this case, the injured was examined as PW1. PW1 deposed that at the time of accident, he proceeded in his bicycle from south-north, at that time, the driver of the offending vehicle drove his vehicle in a rash and negligent manner and dashed against his vehicle and he fell down and sustained injuries.

8. In this case, the driver of the offending vehicle was examined as RW1. RW1 stated during his evidence that the accident occurred only due to the rash and negligent on the part of the claimant, while he was crossing the road. In respect of the accident, FIR was registered as against the driver of the appellants/respondents. The driver of the offending vehicle has not given any complaint stating that the accident occurred due to the rash and negligent on the part of the injured. Further, he has not sent any petition to the police official objecting the registration of the criminal case against him. Further, RW1 during his cross examination admitted that in respect of the accident, the criminal case was registered against him. Considering the evidence of PW1, RW1 and Ex.P1, it reveals that the accident occurred due to the rash and negligent driving of the driver of the appellants/respondents.

9. The next contention raised on the side of the appellants/respondents is that the claimant has not proved his occupation and income by way of filing relevant documents and the compensation awarded is on the higher side and prays that the civil miscellaneous appeal may be allowed.

10. The learned counsel appearing for the appellants/respondents mainly disputed the amount given towards loss of income. The



tribunal fixed the monthly income at Rs.6,000/- and awarded Rs.24,000/- for loss of income of the injured, while he was in the hospital and awarded Rs.18,000/- for loss of income for the claimant for three months, after discharge from the hospital. To prove it, no document was filed on the side of the claimant. Due to the injuries sustained, it is not possible for the claimant to do his work for 3 or 4 months. Hence, the amount towards loss of income for 7 months given by the tribunal is not correct. Therefore, the claimant is entitled to loss of income only for 4 months and accordingly, he is entitled to Rs.24,000/- (Rs.6,000/- x 4). The amount of Rs.18,000/- awarded under the head of loss of income for 3 months after discharge from the hospital is set aside. Insofar as all other heads, the award of the tribunal is correct. In total, the claimant would be entitled to Rs.1,79,000/- together with interest at the rate of 7.5% pa.

11. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award of the tribunal is reduced to **Rs.1,79,000/-** from 1,97,000/-. The interest awarded by the tribunal is modified into 7.5%. The appellants are directed to pay the entire modified award amount together with interest @ 7.5% p.a from the date of filing the petition, till the date of deposit. The excess amount if any shall be refunded to the appellants. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To,

1. The Motor Accident Claims Tribunal/
Special District Court, Thanjavur.

2. The Record Keeper, (2C)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SPL GP (SR-13341[F] dated 24/03/2021)

C.M.A (MD) No.370 of 2016
23.03.2021

KMK (CO)
KB (27.05.2021) 3P 5C