



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2021

PRONOUNCED ON : 28.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.1518 OF 2018

Gopalakrishnan ... Appellant/Petitioner

Versus

1. K.Vadivel

2. Selvi Sivasakthi Deve

3. The National Insurance Company Ltd.,
No.930, Sakthi Road,
Gandhipuram, Coimbatore. ... Respondents/Respondents

PRAYER:-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.01.2015 made in M.C.O.P.No.1387 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tirupur.

For Appellant : Mr.K.Varadha Kamaraj

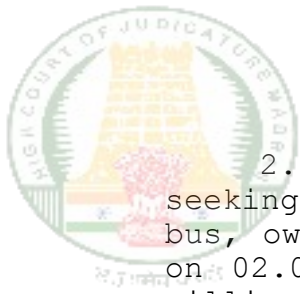
For R1 - Served : No Appearance

For R2 : Not Ready Notice

For R3 : Mrs.R.Sree Vidhya

JUDGMENT

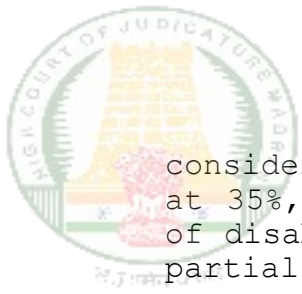
This is an appeal by the claimant. The claimant is aggrieved by the sum of Rs.1,93,000/- awarded by the Tribunal in and by the award dated 19.01.2015 in M.C.O.P.No.1387 of 2009 filed by him.



2. The claimant has filed the M.C.O.P.No.1387 of 2009 seeking compensation from the respondents, who are driver of the bus, owner of the bus and its insurer. According to the claimant on 02.08.2009 at about 8.30 a.m., when he was traveling as a pillion rider in the TVS Moped driven by one Gopinath, near Pandian Nagar, Thirumuruganpoondi Road, the bus bearing Registration No.TN-39-NT-2459 was driven by the 1st respondent in a rash and negligent manner and hit the two-wheeler driven by the said Gopinath. In the impact, the claimant sustained grievous injuries and admitted in Government Hospital, Tirupur and subsequently taken treatment in CMC Hospital, Coimbatore. According to the claimant, at the time of accident, he was 37 years old and working as a Packer in Thirupathi Tex, Pandian Nagar and was earning a sum of Rs.7,000/- per month. Therefore, for the injuries he sustained in the accident, the claimant has filed the claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. On notice, the 3rd respondent/Insurance Company filed counter statement before the Tribunal. It is the defense of the Insurance Company that the 1st respondent had driven the mini bus in a careful manner. However, it was the driver of the TVS-50, over which the claimant was traveling as a pillion driver, driven it negligently which resulted in the accident. It is also the defense of the Insurance Company that the driver of the TVS-50 by name Gopinath did not possess a valid driving licence at the time of accident and therefore, conveniently the claimant did not implead the insurer of the TVS-50 Motor vehicle. The Insurance Company also denied the various averments relating to the age, income and avocation of the claimant and prayed for dismissal of the claim petition.

4. Before the Tribunal, on behalf of the claimant, he examined himself as P.W.1 and narrated the injuries he sustained in the accident. Dr.Sendhil Kumar was examined as P.W.2 and one Muruganandam as P.W.3 and Exs.P1 to P11 were marked on his side. The respondents in the claim petition did not examine any witness on their side or marked any document. The Tribunal taking note of the oral and documentary evidence has held that the 1st respondent/ driver of the bus was negligent in causing the accident. At the same time, the Tribunal also rendered a finding that Gopinath, the driver of the two-wheeler had driven the vehicle without noticing the on coming mini-bus driven by the 1st respondent. Had he been cautious he could have averted the accident. Therefore, the Tribunal awarded the compensation amount to be paid by the driver of the two-wheeler as well as the 3rd respondent/Insurance Company in the ratio of 50:50. As regards the quantum of compensation, by taking into



consideration, the percentage of disability assessed by P.W.2, at 35%, the Tribunal awarded a sum of Rs.3,000/- per percentage of disability to arrive at a sum of Rs.1,05,000/- under the head partial disablement. For pain and suffering a sum of Rs.30,000/- was awarded and for attendant charges a sum of Rs.20,000/- was awarded. The Tribunal also taken into account, the loss of earning during the period of treatment and awarded Rs.6,000/- per month for three months, to arrive at a sum of Rs.18,000/- per month. In all a total sum of Rs.1,93,000/- was assessed as compensation out of which 50% was directed to be paid by the 3rd respondent/Insurance Company. Feeling aggrieved, the claimant has come forward with this appeal.

5. The learned counsel for the appellant submitted that the Tribunal without any evidence has fixed contributory negligence at 50%. There was no evidence adduced on behalf of the respondents before the Tribunal to show that the driver of the TVS 50 motor vehicle has in any manner contributed for the accident. While so, on the basis of the deposition adduced by the witnesses examined by the claimant himself, the Tribunal has erroneously assessed the contributory negligence at 50%. Further, the Tribunal awarded a very meager sum of Rs.18,000/- for the loss of income during the period of treatment which requires to be enhanced. It is also submitted by the learned counsel for the appellant that the Tribunal erred in awarding a sum of Rs.1,05,000/- towards partial disablement without taking into account the nature of injuries sustained by the claimant, the period of treatment and the future treatment required to be taken by him. In effect it is the submission of the learned counsel for the appellant that the amount awarded by the Tribunal is meager and the liability fastened at 50% on the driver of the two wheeler is also erroneous and therefore he prayed for allowing the appeal.

6. Though notice was sent to the respondents 1 and 2, they are not represented by any counsel before this Court.

7. On the above contention, this Court heard the learned counsel for the 3rd respondent/Insurance Company who only supported the award passed by the Tribunal.

8. I have carefully considered the rival pleadings. The Insurance Company has not, at the outset, filed any appeal questioning the liability fastened on them. This appeal is filed by the claimant questioning the 50% liability fixed upon the driver of the two wheeler as also for enhancement of the



compensation amount awarded by the Tribunal.

9. It is true that there was no evidence adduced on behalf of the respondents in the claim petition. However, the Tribunal considered Ex.P4, rough sketch drawn at the time of accident. The Tribunal, on perusal of Ex.P4 has concluded that the accident had occurred in the middle of the road. The Tribunal also observed that the two wheeler was driven by the driver of TVS 50 motor vehicle, while approaching the main road from a by lane without noticing the on-coming bus driven by the first respondent. Therefore, this Court is of the view that such a factual findings recorded by the Tribunal based on Ex.P4 need not be interfered with by this Court in this appeal. Therefore, this Court hereby confirms the liability fixed by the Tribunal in the ratio of 50: 50 on the owner of the two wheeler as well as the Insurance Company.

10. It is not in dispute that there was an accident during which the claimant, who was riding pillion in TVS-50 motorcycle, was hit by the mini bus driven by the 1st respondent. It is seen that the claimant has sustained fracture in his head, grievous injuries in his left fore-head, left side head and injuries all over his body. He was admitted as an in-patient in Government Hospital, Thirupur on 02.08.2009. It is stated that subsequently the claimant has also taken treatment in CMC Hospital, Coimbatore for the injuries he sustained in the accident. To prove the same, the claimant has produced Ex.P7-medical bills, for a sum of Rs.5,000/-. The Tribunal awarded the medical expenses incurred by him as per the Ex.P7.

11. The main grievance of the claimant appears to be that the loss of income awarded during the period of treatment is very low. I find some force in the submission of the learned counsel for the appellant. In my view, the Tribunal instead of awarding loss of income for three months ought to have awarded compensation for five months. Accordingly, this Court award a sum of Rs.30,000/- at the rate of Rs.6,000/- per month for five months, towards loss of income during the period of treatment.

12. It is also seen that the Tribunal has not awarded any compensation under the head loss of amenities, which this Court awards at Rs.10,000/-.

13. Before the Tribunal, P.W.2-Doctor examined on the side of the claimant, assessed the disability of the claimant at 35%. The Tribunal did not reduce the percentage of disability and



taken the disability as assessed by the Doctor. However, the Tribunal awarded a sum of Rs.3,000/- per percentage of disability which according to the claimant is meager. Taking note of the fact that the accident had taken place on 02.08.2009, the claimant was working as a Packer in Thirupathi Tex, Pandian Nagar and was earning a sum of Rs.7,000/- per month, this Court is of the considered view that the percentage of disability taken note of by the Tribunal and the award of a sum of Rs.3,000/- per percentage of disability does not call for any interference by this Court. Hence, the award passed by the Tribunal is modified as mentioned below:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,05,000/-	1,05,000/-	Confirmed
2.	Pain and sufferings	30,000/-	30,000/-	Confirmed
3.	Transportation	5,000/-	5,000/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Medical bills	5,000/-	5,000/-	Confirmed
6.	Attendant charges	20,000/-	20,000/-	Confirmed
7.	Loss of income	18,000/-	30,000/-	Enhanced
8.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,93,000/-	Rs.2,15,000/-	Enhanced by Rs.11,000/-
	50% of the award amount	Rs.96,500/-	Rs.1,07,500/-	(Rs.1,07,500/- - Rs.96,500/-)

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,93,000/- is hereby enhanced to Rs.2,15,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit 50% of the award amount, (i.e., Rs.1,07,500/-) now determined by this Court, along with interest and costs, less the amount already deposited, if any, 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.1387 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional District



and Sessions Court, Tirupur. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tirupur.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.13185
+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.13265

C.M.A.NO.1518 OF 2018

EV(CO)
PBS/31/03/2022