



WEB COPY



C.M.A.No.1905 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1905 of 2023

Murugesan

...Appellant

Vs

1.Periyasamy

2.The New India Assurance Company Limited,
Divisional Office, Jawaharlal Nehru Street,
Pondicherry.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal by enhancing the compensation awarded in the Judgment and Decree dated 12.12.2022 passed in MCOP.No.364 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi.

For Appellant : Mr.K.Suryanarayanan

For Respondent : Mr.N.Somasundar, for R2



C.M.A.No.1905 of 2023

JUDGMENT

WEB COPY

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 12.12.2022 passed in MCOP.No.364 of 2020.

2. The learned counsel for the claimant would submit that on 18.12.2020, while the claimant was travelling as a pillion rider in a two-wheeler bearing Registration No.TN-15-L-6291 at Somandarkudi M.Vannanjur, a Harvester, belongs to the 1st respondent, suddenly turned in a rash and negligent manner and dashed against the claimant, due to which he had sustained grievous injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Injuries	50,000
2	Pain and Sufferings	20,000
3	Transportation Charges	10,000
4	Extra Nourishment	10,000
5	Loss of Earning	27,000
6	Medical Expenses	44,889
	Total	1,61,889

3. He would further submit that though the accident was occurred only



C.M.A.No.1905 of 2023

due to the negligence of the driver of the Harvester, while awarding compensation, the Tribunal had fastened 50% negligence towards the claimant and 50% negligence towards the driver of the Harvester. He would also submit that since the Harvester would go only at the speed of 30 to 40 km/hr, the rider of the two-wheeler tried to overtake the Harvester and at that point of time, the accident was occurred since the driver of the Harvester had not allowed the rider of the two-wheeler to overtake his vehicle and while overtaking, he had inadvertantly dashed against the claimant, due to which, he sustained injuries. Without considering the said aspect, the Tribunal had fastened 50% liability towards the rider of the two-wheeler for overtaking the Harvester. Hence, he requests this Court to re-determine the same.

4. On the other hand, the learned counsel for the respondent would submit that the Tribunal has categorically recorded that it was a narrow road and only the rider of the two-wheeler had invited the accident by making an attempt to overtake the Harvester. Hence, the Tribunal had rightly fastened 50% liability against the rider of the two-wheeler and the same does not need any re-consideration.



C.M.A.No.1905 of 2023

5. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

6. Upon perusal of records, it appears that the driver of the Harvester was neither impleaded as a party nor examined before the Tribunal. The insurance company had not took any steps to examine the driver of the Harvester before the Tribunal in order to prove their case that the accident was occurred due to the negligence on the part of the rider of two-wheeler also.

7. Further, it appears that the rider of the two-wheeler and the Inspector was examined and it is an admitted fact that the rider had attempted to overtake the Harvester and there is no dispute with regard to the same.

8. Normally, a Harvester would move only at a speed of 30 to 40 km/hr. In such case, though the Harvester occupied the entire road, the driver of the Harvester is supposed to have noticed the attempts made by the rider of two-wheeler to overtake his vehicle and provided way to the said two-wheeler. Thus, a duty cast on the Harvester to slowdown or stop the vehicle and provide way for other vehicles, however, the driver of the Harvester failed to do so. Further,



C.M.A.No.1905 of 2023

in the present case, nothing has been culled out by the Insurance Company with regard to the aforesaid aspects but the Harvester only dashed against the two-wheeler without providing any way. Hence, this Court is of the considered view that the negligence is totally on the part of the driver of the Harvester and not on the rider of the two-wheeler. Therefore, 50% negligence fastened by the Tribunal against the rider of the two-wheeler is hereby set aside and the entire negligence is fastened against the driver of the Harvester.

9. With regard to the quantum of compensation, the learned counsel appearing for the claimant would submit that the compensation awarded by the Tribunal is on the lower side and hence, he requests this Court to enhance the same.

10. Upon perusal of the documents, it appears that no disability certificate was produced by the claimant and hence, depending upon the nature of injuries sustained by the claimant, the Tribunal had awarded compensation of a sum of Rs.1,61,889/- and the same appears to be just and reasonable. Therefore, this



C.M.A.No.1905 of 2023

Court is inclined to confirm the compensation awarded by the Tribunal.

Accordingly, the compensation awarded by the Tribunal vide award dated 12.12.2022 stands confirmed on the aspect of quantum of compensation. Since this Court had fastened the entire liability against the driver of the Harvester, the Insurance company is liable to pay the entire award amount.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit the entire award amount of a sum of Rs.1,61,889/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.364 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi. Upon such deposit, the Tribunal is directed to transfer the award amount to bank account of the claimant, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimant. No costs.

13.03.2024

Index: Yes/No

6/8



C.M.A.No.1905 of 2023

Internet: Yes/No

Speaking order/Non-speaking order

nsa

WEB COPY



WEB COPY



C.M.A.No.1905 of 2023

KRISHNAN RAMASAMY,J.

nsa

C.M.A.No.1905 of 2023

13.03.2024