



C.M.A. No. 2859 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2859 of 2021

R. Sekar @ Sekaran

... Appellant / Petitioner

Vs.

1. M/s. Simpson & Company Ltd.,
No.861 / 862, Anna Salai,
Chennai – 600002.

2. United India Insurance Co. Ltd.,
Third Party Hub,
Silinghi Buildings,
No.134, Greams Road,
Chennai – 600006.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 6073 of 2016 dated 07.12.2020 on the file of the III Judge (FAC), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : M/s. Ramya V. Rao

For R1 : M/s. Remy Josephine Mary
for Mr. C. Mohan
for M/s. King and Partridge

For R2 : Mr. M.J. Vijaya Raghavan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant challenging the dismissal of claim petition in M.C.O.P. No. 6073 of 2016 dated 07.12.2020 on the file of the III Judge (FAC), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 30.05.2016, at about 15:30 hours, the claimant was travelling as a pillion rider in the motorcycle bearing Registration No.TN-03-M-7308 driven by one Arun from East to West direction at G.N.T road, while they reached near Repco Company, Madhavaram, a Maruthi Omni ambulance bearing Registration No.TN-01-V-4370 driven by its driver in a rash and negligent manner, suddenly over took the motorcycle on the left side to enter Thattankulam junction and dashed against the motorcycle, which resulted in causing grievous injuries to the claimant herein. For the injuries sustained, the claimant has come forward with claim petition seeking



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compensation for a sum of Rs.10,00,000/- by invoking section 166 and 142(B) of Motor Vehicles Act, 1988.

4. The first respondent is the owner of the Maruthi Omni ambulance has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the Maruthi Omni Ambulance filed a counter and contended the claim on the ground that the rider of the two wheeler is responsible for the accident and the criminal case in Cr.No.257/2016 on the file of Madhavaram Police Station was registered only against the rider of the two wheeler. The insurance company has further contended that the compensation claimed is also excessive, hence prays to the dismiss the claim petition.

5. The Tribunal after considering the evidence placed on record has held that the rider of the two wheeler is responsible for the accident and even though, the claimant claims that the driver of the Maruthi Omni Ambulance is responsible for the accident and no materials or evidences were adduced including the final report of the Police, hence accepted the case of the insurance company and dismissed the claim petition.



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6. Aggrieved over the dismissal of claim petition, this appeal has been filed by the claimant.

7. The learned counsel for the claimant submitted that the claimant herein is as pillion rider and no evidence on the side of the respondents have been adduced to contradict and disprove the evidence of claimant. The Tribunal purely relying on the recitals in the F.I.R has held that the rider of the two wheeler, in which the claimant travelled as pillion rider is responsible for the accident, which is not acceptable evidence. She further submitted that even it is accepted that rider of the two wheeler is responsible for the accident, the manner in which the accident has taken place, it is a composite negligence, hence the claimant is entitled to get compensation from any one of the party as per ***Khenyei vs. New India Assurance Company Limited and others [(2015) 9 Supreme Court Cases 273]***. She also further submitted that after the accident, the driver of the Maruthi Omni Ambulance has lodged the police complaint and the same has not been disputed by the claimant, however he has come forward with a representation after 45 days at the time of filing claim petition, that the driver



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of the Maruthi Omni Ambulance is responsible for the accident, hence prays to set aside the award of the Tribunal and to award compensation.

8. The learned counsel appearing for the insurance company submitted that it is the case of the claimant that he has come forward with a police complaint alleging that the Maruthi Omni Ambulance is responsible for the accident but he has not come forward with the complaint immediately after the accident. The Tribunal after appreciating the evidence placed on record and also the manner in which the accident has taken place has rightly held that the rider of the two wheeler is responsible for the accident and prays to confirm the Order of the Tribunal.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. The award of the Tribunal shows that the claimant himself was examined as P.W.1 and he has stated before the Tribunal that he travelled in the motorcycle as a pillion rider along with one Arun from East to West direction at the G.N.T road, while they reached near Repco Company,



Madhavaram, a Maruthi Omni Ambulance suddenly over took the motorcycle and turn on the left hand side of the road to enter Thattankulam junction, which resulted in accident. However, this evidence has not been accepted by the Tribunal on the ground that the F.I.R was registered against the rider of the two wheeler.

11. Ex.P.1 – F.I.R shows that driver of the Maruthi Omni Ambulance lodged the complaint stating that while he was driving the Ambulance on 30.05.2016 on the G.N.T road from East to West direction, near Repco Company, Madhavaram for the purpose of turning towards right hand side, after proper indication, he turned the vehicle, however, on seeing another car, which came in the opposite direction, he stopped the vehicle, at that time, a motorcycle came from East to West direction, hit on the right hand side door of the Ambulance, which resulted in accident. The respondents have not examined the driver of the Maruthi Omni Ambulance before the Tribunal. However, the Tribunal has totally accepted the recitals in the F.I.R and held that the rider of the two wheeler alone is responsible for the accident.



12. On careful scrutiny of F.I.R, it shows that when the driver of the Maruthi Omni Ambulance attempted to turn the vehicle towards right hand side of the road, the motorcycle which was following the Ambulance, hit on the right hand side door of the Ambulance. The recitals in the F.I.R also shows that the Ambulance was turning on the right hand side and the motorcycle had hit on the middle of the Ambulance, hence it is sufficient enough to hold that the motorcycle has hit on the Ambulance in its middle portion, when the Ambulance was turning toward the right hand side. If the rider of the motorcycle has driven the vehicle in moderate speed and by maintaining safe distance, he could have avoided the accident, but the fact also shows that the rider of the motorcycle has hit on the middle of the Ambulance, hence, if the driver of the Maruthi Omni Ambulance has taken a proper precaution before turning right hand side, he could have avoided the accident. Therefore, this Court is of the view that both the rider of the motorcycle and driver of the Maruthi Omni Ambulance are responsible for the accident and the finding of the Tribunal that only the rider of the motorcycle alone is responsible for the accident based on the recitals in the F.I.R and without any corroborative evidence to show negligent on the part of the rider of the motorcycle is not proper.



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13. Based on the above observations, this Court is of the view that the negligence on the part of both the vehicles are responsible for the accident. Even though, the claimant has claimed that the negligence on the part of the driver of the Maruthi Omni Van is responsible, the accident shall only be construed as composite negligence. The Hon'ble Apex Court in ***Khenyei vs. New India Assurance Company Limited and others [(2015) 9 Supreme Court Cases 273]*** and ***Pawan Kumar and Ors. Vs. Harkishan Dass Mohan Lal and Ors. [2014 ACJ 704,]***, held that it is not necessary for the Tribunal, while deciding the nature of the accident caused by the composite negligence to fix liability on each tortfeasor. The Full Bench judgment of the Hon'ble Apex Court in ***Khenyei vs. New India Assurance Company Limited and others***, has held a reference for fixing the liability in paying the compensation in respect of composite negligence by referring various judgments has held as follows:

“26. On the same principle, in the case of joint tortfeasors where the liability is joint and several, it is the choice of the claimant to claim damages from the owner and driver and insurer of both the vehicles or any one of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the



owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them. There cannot be apportionment of claim, of each tortfeasor in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim.

27. To sum up, we hold as under-

- (i) Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue the owner, driver and insurer of both the vehicles. The claimant may implead the owner, driver and insurer of both the vehicles or any one of them.*
- (ii) There cannot be apportionment of the liability of joint tortfeasors. In case both the joint tortfeasors are impleaded as party and if question of apportionment can be considered by the Claims Tribunal. However, on general principle of law, there is no necessity to apportion the inter se liability of joint tortfeasor."*

14. Further, in this case, the rider, owner of the motorcycle and its insurer is not added as a party, hence as per the Apex Court judgments cited supra, the compensation may be recovered from anyone of the tortfeasors against whom, the claim is made. Accordingly, this Court is of the view that the respondents who are also a joint-tortfeasor liable to pay compensation to the claimant.

15. With regard to quantum of compensation, the claimant has



marked Ex.C.1 - Disability Certificate issued by the Regional Medical Board, Government Stanley Hospital, which shows that the claimant has sustained 23% partial permanent disability for the injuries sustained by him on the left femur. This Court finds no reason to interfere with the above disability, however, the injuries sustained by the claimant is not functional permanent disability, which leads to loss of earning capacity and considering the date of accident and age of the injured, this Court is inclined to grant Rs.5,000/- per percentage of disability, accordingly, the compensation under disability is assessed as Rs.1,15,000/- (Rs.5,000/- X 23% disability).

16. Ex.P.3 – Discharge Summary issued by Stanley Medical College and Hospital, wherein it is recorded that the claimant was admitted on 30.05.2016 and discharged on 07.07.2016, he has also undergone surgery on 29.06.2016, therefore, he has undergone in-patient treatment for 37 days. Considering the period of treatment and nature of injuries, this Court is inclined to award three months as loss of income during his disablement period. In this case, the claimant has not produced any evidence to show his income, hence this Court by considering the age and date of accident is inclined to fix Rs.10,000/- per month as notional income



of the claimant, accordingly, Rs.30,000/- (Rs.10,000/- X 3 months) is awarded as compensation for the loss of income during the disablement period. This Court is also inclined to award Rs.5,000/- towards extra nourishment, Rs.10,000/- each under the head Attender charges, Transportation expenses and loss of amenities.

17. Accordingly, the compensation awarded under various heads by this Court is as follows:

S.No.	Description	Amount awarded by this Court (Rs)
1.	Disability (Rs.5,000/- X 23%)	1,15,000/-
2.	Loss of income during disablement period	30,000/-
3.	Loss of Amenities	10,000/-
4.	Attender Charges	10,000/-
5.	Transport charges	10,000/-
6.	Extra Nourishment	5,000/-
	Total Compensation	1,80,000/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded is **Rs.1,80,000/- [Rupees One Lakh and Eighty Thousands only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the



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default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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.6073 of 2016 on the file of the III Judge (FAC), Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has granted compensation, the appellant/ claimant is directed to pay the necessary Court fee, if any, on the compensation awarded. There shall be no order as to costs in the present appeal.

22.03.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The III Judge (FAC),
Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.



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