



WEB COPY



C.M.A.No.2078 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2078 of 2022
and
Civil Miscellaneous Petition No.16100 of 2022

M/s. United India Insurance Co. Ltd.,
Having its Branch Office
At No.146-N, Kumar Complex,
Tiruchengode Town,
Tiruchengode.

... Appellant /R3

Vs.

1. S. Ashok Kumar

... Respondent / Petitioner

2. M. Sadasivam

3. The Correspondent,
Reliance Matriculation Higher Secondary School,
Kuppandampalayam,
B.Komarapalayam, Tiruchengode Taluk,
Namakkal District – 638 183

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Award and Decree dated 27.01.2021
passed in M.C.O.P.No.250 of 2012 on the file of the Motor Accident Claims
Tribunal, Subordinate Court, Gobichettipalayam.



WEB COPY



C.M.A.No.2078 of 2022

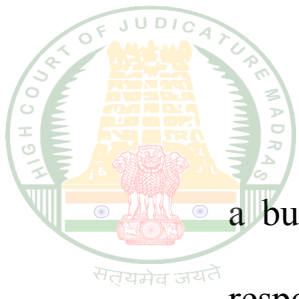
For Appellant : Mr. S. Arun Kumar
For R1 : Mr. M. Karthik
For Mr. J. Titus, Erode
For R2 : Service awaited
For R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company/3rd respondent in the claim petition, challenging the negligence as well as quantum of compensation fixed by the Tribunal in M.C.O.P. No.250 of 2012, dated 27.01.2021 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gobichettipalayam.

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

3. The claimant herein has come forward with the claim petition seeking compensation for the injuries sustained by him in the road accident taken place on 21.10.2011 at about 8.30 p.m. According to him, while he was riding his two-wheeler bearing registration No.TN 36 P 7448, on the Komarapalayam - Pallipalayam Main Road, near Sathya Narayana Hospital,



WEB COPY

a bus bearing Registration No.TN 59 Y 5846 driven by its driver - first respondent belongs to the second respondent negligently came on the opposite direction and hit on the two-wheeler of the claimant. After undergoing treatment, the claimant had come forward with the claim petition seeking compensation for a sum of Rs.7 lakhs by invoking section 166 of the Motor Vehicles Act, 1988.

4. Before the Tribunal, both the driver and owner of the bus were remained ex-parte and the insurer contested the claim, disputed the manner, in which the accident had taken place and also disputed the quantum of compensation claimed, the percentage of disability sustained by the claimant.

5. The Tribunal after considering the evidence placed on record, accepted the case of the claimant that the first respondent has driven the bus negligently and caused the accident thereby, all the respondents are liable to pay the compensation. The Tribunal has also quantified the compensation and awarded a sum of Rs.3,49,530/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

6. Challenging the negligence as well as quantum fixed by the



Tribunal, the Insurance Company has come forward with this appeal.

WEB COPY

7. The learned counsel for the Insurance Company submitted that the accident was taken place while the claimant crosses the opposite direction of the road and hit on the bus. In this regard, a Rough Sketch was marked as Ex.P3 and also by cross examining P.W.1-claimant, the Insurance Company is able to establish that the claimant went to the opposite direction of the road and hit on the bus thereby, the entire liability is to be fixed on the claimant. He further submitted that though, the First Information Report-Ex.P2 was registered against the first respondent, on the basis of the complaint given by the claimant herein and after investigation, final report was filed stating that the claimant herein is responsible for the accident. He also relied on the evidence adduced in this regard and prays to set aside the award.

8. The learned counsel for the claimant submitted that the Insurance Company has filed two contradictory counters. At one stage they have contended that the first respondent driven the vehicle in due diligence and the claimant has gone to the opposite direction and hit on the bus and the another stage, they contended that the claimant has lost balance of the two-



WEB COPY

wheeler and fell down and hit on the bus. The learned counsel for the claimant further submits that Ex.P3 - Rough Sketch is not a conclusive proof and the respondents have not examined any eye-witness to the occurrence and failed to examine the first respondent before the Tribunal. Therefore, the finding of the Tribunal regarding negligence is based on the evidence placed on record and prays to confirm the award.

9. I have considered the submissions made on both sides and also perused the records available.

10. In the cross examination of P.W.1/Claimant, it is elicited that he was riding a two-wheeler from South to North direction, a bus was coming from the North to South direction on the Komarapalayam to Pallipalayam Main Road. He has also admitted that the information recorded in the Rough Sketch - Ex.P3 is proper. He further stated that in the Rough Sketch, the place of accident has been recorded as SOC and the place of SOC was marked on the Eastern side of the road run towards South to North direction. However, he stated that SOC refers the place, where he fell down.

11. It is also the evidence of R.W.1 that the final report was filed in the



WEB COPY

criminal case by filing referred charge sheet on the ground that complaint lodged is “mistake of fact” i.e., the accident was not taken place as stated by the claimant and bus driver had not driven the vehicle negligently. Though, in the Rough Sketch it has been recorded that the place of occurrence is one the wrong side of the road and there is no other eye-witnesses to show that whether SOC is the real place of the accident or not, however, it is admitted by the claimant that he fell down there.

12. The Judgment of this Court in ***New India Assurance Company Limited v. District Superintendent of Police (C.M.A.No.54 of 2012 dated 30.03.2012)*** has held in paragraph No.18 as follows:

“18. In the light of the above discussions, this Court is not inclined to reverse the finding of negligence, which has to be decided on the basis of evidence in each case. In every case of head on collision, negligence cannot be fixed on both drivers. A sketch produced by either of the parties, in a claim petition can be taken as one of the evidence, to prove the manner of accident, but that alone is not the conclusive proof. The direction of the vehicle shown in the rough sketch alone cannot be a decisive factor to fix negligence.”

13. The Rough Sketch could not be considered as a conclusive evidence unless there is corroborative evidence. Similarly, the evidence placed on record shows that there is a head on collision. Even though, it is in the Eastern side i.e., the manner, in which the accident had stated is the



WEB COPY

head on collusion. Once it has been established that the head on collusion, then the Tribunal has to venture in to the evidence placed on record more particularly, the evidence of witnesses of the occurrence. In this case, except the evidence of claimant, no other contra evidence has been adduced.

14. The evidence placed on record shows that the accident had taken place as head on collusion and whether this head on collusion caused by the driver of the bus or the rider of the two-wheeler could be decided based on the other circumstances. There is no contra evidence produced and the Tribunal has accepted the case of the claimant that the accident had taken place due to the negligent act of the first respondent. Since the Tribunal has arrived its conclusion based on the evidence, I am not inclined to take a different view than the view taken by the Tribunal in this regard.

15. On careful perusal of the evidence also shows that the claimant has not wearing head gear or helmet and the exhibits such as Discharge Summary-Ex.P8 and Wound Certificate-Ex.P7 major injuries sustained by the claimant on his head and this Court by following the Judgment of this Court in ***C.M.A.(MD). No. 987 and 988 of 2014 dated 13.02.2017, The Branch Manager (Oriental Insurance Company Limited) vs. Indirani and***



WEB COPY

others has fixed the contributory negligence to the extent of 20% and accordingly, I am of the view that the claimant is liable to contribute to the accident to the extent of 20% and the same is hereby confirmed. The relevant paragraph of the Judgment has held as follows:

“11. Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:

"129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:

Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explantion.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

12. This Court has elaborately dealt with the instances of wearing of helmet by quoting the details of death cases due to non-wearing of helmet in R. Mallika and others vs. A. Babu and others [C.M.A.No.3235 of 2014,decided on 08.06.2015] and therefore, 15%



WEB COPY



C.M.A.No.2078 of 2022

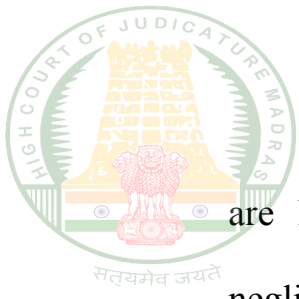
negligence has to be fixed on the rider of the two wheeler for not wearing the helmet and accordingly, 15% negligence is fixed on the rider of the two wheeler.”

16. As far as the quantum of compensation is concerned, the Tribunal awarded compensation under various heads and one of the grievances raised by the learned counsel for the Insurance Company is that the compensation awarded under the head pain and sufferings is on the higher side.

17. As observed in the earlier paragraphs that the major injuries sustained by the claimant is on the head i.e., fracture frontonasoseptoethmoidal complex with monline EDH, Leforte type 2 maxilla fracture, scalp laceration forehead, scapula fracture left shoulder and subsequently he has also undergone several surgeries.

18. Considering the same, the compensation awarded under the head pain and sufferings is reasonable and I am inclined to accept the same. Similarly, the compensation awarded under other heads are concerned, the same is just and reasonable hence, I am not inclined to interfere with the said finding and the same are hereby confirmed.

19. Accordingly, the award passed by the Tribunal under various heads



C.M.A.No.2078 of 2022

are hereby confirmed and the the claimant is liable for contributory negligence to the extent of 20%. Accordingly, the compensation payable to the claimant is as follows:

Total award amount Rs.3,49,530/-

Less Contributory Negligence Rs.69,906/-

The compensation payable: Rs.2,79,624/-

20. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,49,530/- is hereby reduced to Rs.2,79,624/- [Rupees Two Lakhs Seventy Nine Thousand Six Hundred and Twenty Four only] together 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 default period, if any. The Insurance Company is directed to deposit the award amount 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.250 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gobichettipalayam. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount by directly crediting in to the Savings Bank Account of the



C.M.A.No.2078 of 2022

claimant. In other aspects the award of the Tribunal shall stand confirmed.

There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

06.12.2024

ssi

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gobichettipalayam.

2.The Section Officer,
VR Section,
High Court, Madras.

K.RAJASEKAR,J..

ssi



WEB COPY



C.M.A.No.2078 of 2022

C.M.A.No.2078 of 2022

06.12.2024