

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.3731 & 3798 of 2008

&

MP.No.1 of 2008 in CMA.No.3798 of 2008

CMA.No.3731 of 2009 :

The Branch Manager,

United India Insurance Co. Ltd.,

Branch Office,

No.11-A, M.C.Road,

P.B.No.37, Ambur - 635 802

Vellore District.

... Appellant/Respondent II

Vs.

1.V.Manoharan

...Respondent/Petitioner

2.T.Elangovan

(Set exparte before MACT. Notice given up)

...Respondent II/Respondent I

3.The Managing Director,

Tamil Nadu State Transport Corporation,

Bharathipuram, Dharmapuri-5.

No.328, Salem Main Road,

Krishnagiri Town, Dharmapuri District.

... Respondent

CMA.No.3798 of 2008 :

The Branch Manager,

United India Insurance Co. Ltd.,

Branch Office,

No.11-A, M.C.Road,

P.B.No.37, Ambur - 635 802

Vellore District.

... Appellant/Respondents II

Vs.

1.Mohammed Rafiq

...Respondent I/Petitioner

2.T.Elangovan

...Respondent II/ Respondent I

3.The Managing Director,

Tamil Nadu State Transport Corporation,

(Salem Division - II) Ltd.,

Bharathipuram, Dharmapuri-5. ... Respondent III

Prayer in CMA.No.3731 of 2008 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.01.2006 made in MCOP.No.1388 of 2003 on the file of the MACT (Sub Court) at Krishnagiri.

Prayer in CMA.No.3798 of 2008 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.01.2005 made in MCOP.No.1358 of 2003 on the file of the MACT (Sub Court) at Krishnagiri.

For Appellant : Mr.T.Ravichandran (in both CMAs)
For Respondents : No Appearance (in both CMAs)

COMMON JUDGMENT

In a road accident that took place on 02.05.2002, a tempo van bearing Registration No.TN29-N-0852 belonging to the second respondent and insured with the appellant said to have dashed against a bus belonged to the State Transport Corporation (3rd respondent herein), owing to which, two passengers in the transport bus were said to have suffered injuries for which, they moved the Tribunal separately and sought compensation for their respective injuries. In the case from which CMA.No.3731 of 2008 has arisen, the permanent disability of the claimant was determined at 40% and he had been awarded total compensation of Rs.1,51,500/-in MCOP.No.1388 of 2003; and MCOP.No.1358 of 2003 is the other matter from which CMA.No.3798 of 2008 arises, in which the percentage of permanent disability was assessed @ 45% and granted total compensation of Rs.1,54,000/-.

2. It is the case where only respondents 1 & 2 in CMA.No.3798 of 2008 alone have been served with notice and the first respondent/claimant in CMA.No.3731 of 2008 is yet to be served. However, for the conclusion I propose to arrive at upon hearing the counsel for the appellant, and given the time lag between the date of accident and when these appeals are heard today, I propose to dispense with further notice to the claimants.

3. Heard the learned counsel for the appellant. The learned counsel essentially raised two points :

- It is a case of head on collision involving two vehicles namely a van and a transport bus, and necessarily negligence should have been apportioned equally between both the drivers of both the vehicles but the Tribunal had ignored the negligence contributed by the driver of the bus entirely.
- The nature of injury that the claimants in both the cases said to have suffered are not very serious, but their effects are exaggerated excessively. Further the Tribunal

had also been far too generous in awarding compensation almost on every conceivable heads some among which are such where the claimants do not deserve to be compensated at all.

4. On the first point that the appellant argued, except the statement of the learned counsel, there is no material evidence to indicate that the driver of the transport bus had also contributed to the occurrence of the accident. The Insurance Company has not examined the driver of the van or any other independent witness to prove the same. It may be that the accident might have been head on collision between the two vehicles but that does not automatically imply that both the drivers might have been in equal fault since in a given case it is possible for an innocently going vehicle to get sucked into an accident situation by someone who is truly rash and negligent. Therefore, what is significant is where exactly the accident took place on the road, the dimensions of the road, and the factor as to who among the two drivers had the best opportunity to avoid the accident. In the absence of proof of any of these parameters, it is nigh difficult to interfere with the finding that the Tribunal had arrived at.

5. As to the quantum, it is true that the Tribunal appears to be unduly charitable in granting award such as on the heads of future medical expenses, loss of future earning capacity etc., when the nature of injury does not appear to require a compensation on these heads at all. In that sense the total sum for which awards were passed in both the cases may be said to be excessive, but it is by 2002 standards when the accident took place. Going by the present trend, the amount awarded can hardly be termed excessive and hence I find no merit even in this argument.

5. To conclude, I do not find any merit in these appeals. Both the appeals filed by the appellant are dismissed without costs. Consequently, connected miscellaneous petition is closed. The learned counsel for the appellant added that the entire award amount has been deposited before the Tribunal, and the claimants are permitted to withdraw the amount forthwith.

sd/
Assistant Registrar (CS VI)

/true copy/

Sub Assistant Registrar

ds

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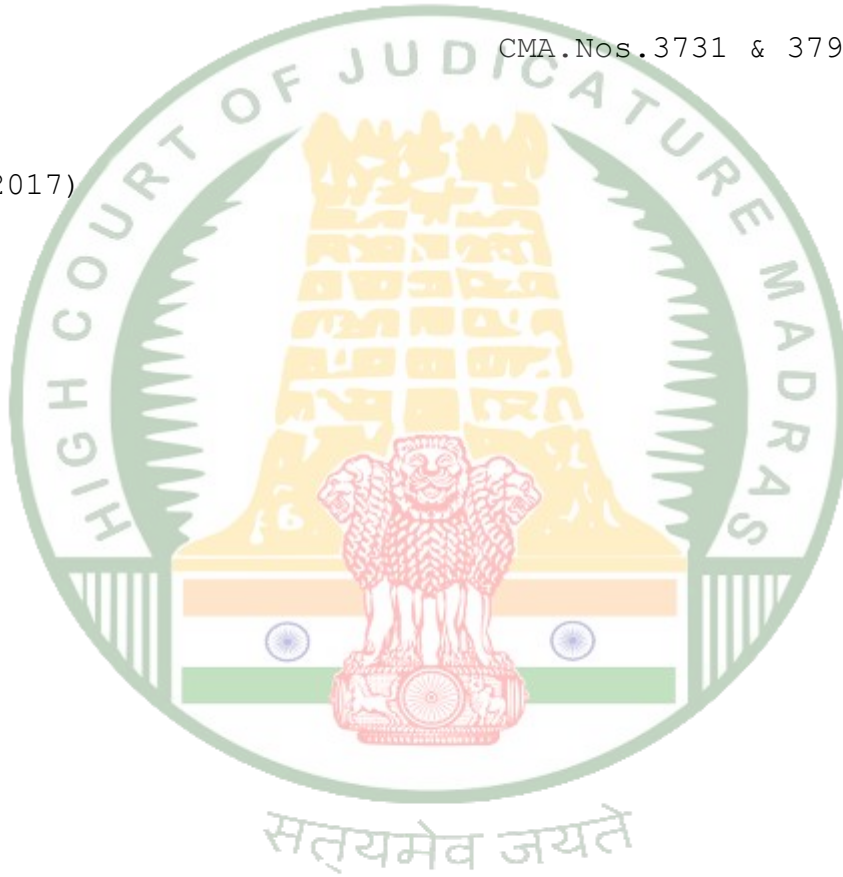
1.The Motor Accidents Claims Tribunal,
Sub Court, Krishnagiri

2.The Record Keeper,
VR Section,
High Court, Madras.

+2cc to Mr.T.Ravichandran, Advocate, SR.No.74412

CMA.Nos.3731 & 3798 of 2008

SVI (CO)
GN(03/02/2017)



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