

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.2538 of 2011

& M.P.No.1 of 2011

The National Insurance Company Ltd.,
78, Thirvengadasamy Chetty Theru,
Erode.

... Appellant/3rd Respondent

-vs-

1.N.Sadasivam1st Respondent/Claimant

2.K.Kannan

3.R.Vetrivalaayutham Respondents 2 & 3/
Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 12.01.2011 made in M.C.O.P.No.505 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirupur.

For Appellant : Mr.G.Udayasankar

For Respondent No.1 : Mr.S.Gunalan

For Respondent
Nos.2 & 3 : Exparte

J U D G M E N T

The Insurance Company / third respondent in M.C.O.P.No.505 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirupur, is the appellant. The claimant has filed the above Motor Claims Original Petition claiming a compensation of Rs.6,24,000/- for the injuries sustained by him, in a motor accident on 05.10.2008.

2. In an accident that occurred on 05.10.2008 at about 11.15p.m., the first respondent / claimant sustained injuries. According to the claimant, the second respondent drove the Lorry bearing Registration No.TN-33-A-4599 in a rash and negligent manner and hit him, as a result of which, he sustained grievous

injuries. The vehicle was insured with the appellant / Insurance Company. He claimed a total compensation of Rs.6,24,000/-.

3. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the negligent act of the driver of the second respondent and awarded a compensation of Rs.2,86,400/- with interest at the rate of 7.5% per annum.

4. The learned counsel appearing for the appellant would submit that there was negligence on the part of the claimant and he was responsible for the accident and hence, the Insurance Company was not liable to pay the compensation.

5. The learned counsel appearing for the first respondent / claimant would submit that the claimant sustained injuries and the Tribunal awarded only a reasonable compensation.

6. The Tribunal based on the materials has come to the conclusion that, the accident occurred only due to rash and negligent act of the driver of the Lorry. There are no valid grounds to take a different view. It is not in dispute that a criminal case has been registered in connection with this accident and after investigation, the Police have laid charge sheet against the driver of the offending vehicle. Therefore, the contention of the learned counsel appearing for the appellant cannot be countenanced.

7. On account of the accident, the claimant sustained injuries and the permanent disability was assessed at 14%. In support of his claim, he marked medical certificates and disability certificate issued by the Doctor. The Tribunal for the disability suffered by the claimant awarded Rs.24,000/-. This cannot be said to be on a higher side and therefore, it is to be confirmed.

8. The Tribunal awarded Rs.40,000/- under the head "pain and sufferings". The claimant was said to be in hospital for 11 days as inpatient. Having regard to the nature of injuries and period of hospitalisation, this appears to be slightly on the higher side. The learned counsel for the claimant would submit that the claimant would be satisfied, if the amount is fixed under the head "pain and sufferings" as Rs.35,000/-. Hence, the amount awarded under the head "pain and sufferings" is reduced from Rs.40,000/- to Rs.35,000/-. The Tribunal awarded Rs.24,000/- towards permanent disability; Rs.3,000/- towards extra nourishment; Rs.7,000/- towards Transportation; Rs.10,000/- towards loss of comforts; Rs.20,000/- towards future medical expenses; Rs.1,82,400/- towards medical bills. The accident occurred at Karumattampatti. He was taken to hospital and then, he was shifted to his

residence. Therefore, the amount awarded under the head Transportation cannot be said to be too high. The amounts awarded under the other heads appear to be reasonable. Therefore, they are to be confirmed.

9. For the foregoing reasons, the award is modified and is re-assessed as follows:

Pain and sufferings	Rs.35,000.00
Permanent Disability (14%)	Rs.24,000.00
Extra Nourishment	Rs.3,000.00
Transportation	Rs.7,000.00
Loss of comforts	Rs.10,000.00
Medical Bills	Rs.1,82,400.00
Future Medical expenses	Rs.20,000.00
Total	Rs.2,81,400.00

10. In the result, the Civil Miscellaneous Appeal is partly allowed. Since the appellant / Insurance Company had deposited the entire award amount of Rs.2,86,400/- with interest at the rate of 7.5% per annum and costs, less the statutory deposit, to the credit of M.C.O.P.No.505 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirupur. The first respondent / claimant is permitted to withdraw the compensation amount of Rs.2,81,400/- awarded by this Court with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. The appellant / Insurance Company is also permitted to withdraw the excess amount lying to the credit of the claim petition. Consequently, the connected Civil Miscellaneous Petition is closed. There shall be no orders as to costs.

सत्यमेव जयते
-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Principal Subordinate Judge,
The Motor Accident Claims Tribunal
Tirupur.

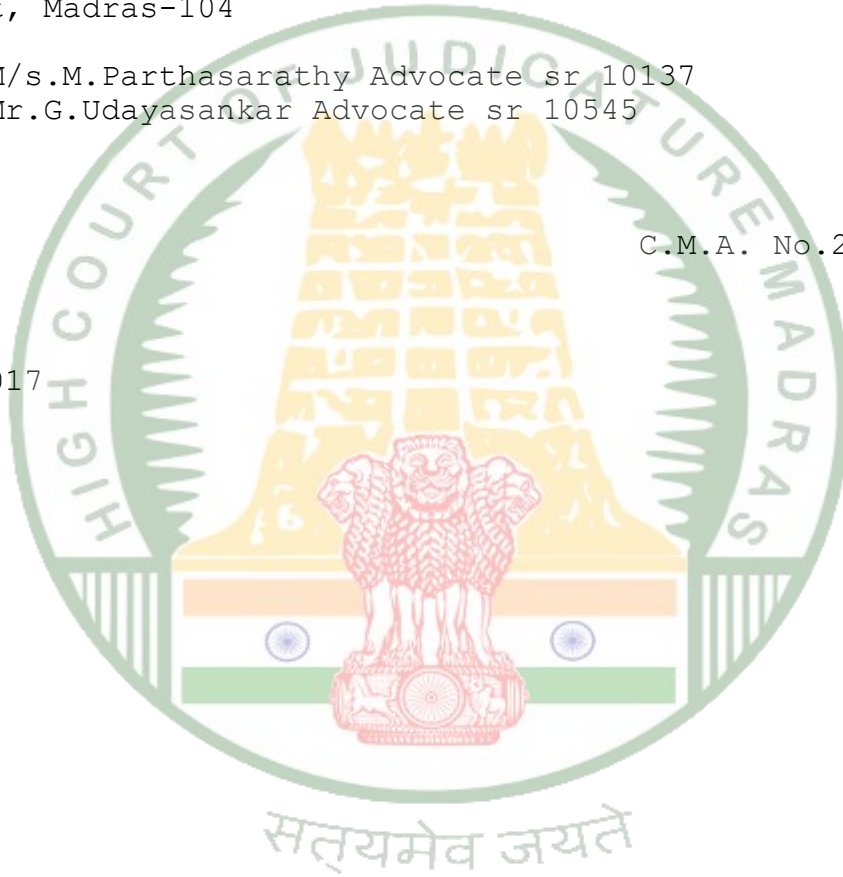
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The Section Officer
VR Section
High Court, Madras-104

+1 cc to M/s.M.Parthasarathy Advocate sr 10137
+1 cc to Mr.G.Udayasankar Advocate sr 10545

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