



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.799 of 2017

K.Muthaiah

... Appellant/Petitioner

Vs.

1. A.Shajahan

2. M/s.New India Assurance Co. Ltd,  
242-B, Kamarajar Salai,  
Madurai - 9.

... Respondents/ Respondents

(1<sup>st</sup> Respondent remained exparte before  
the Tribunal. Hence Notice to the 1<sup>st</sup>  
respondent may be dispensed with)

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 24.01.2017 made in M.C.O.P No.620 of 2015 on the file of the Motor Accidents Claims Tribunal/IV Additional Sub Judge, Madurai.

For Appellant : Mr.K.Kumaravel

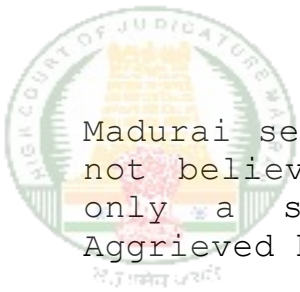
For Respondents : Mr.S.Natarajan for R2  
R1 given up.

### JUDGMENT

Heard the learned counsel for the parities.

2.The claimant has filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

3.The case of the claimant is that he was riding his two wheeler on 07.04.2015 at about 09.45 P.M in Melur - Madurai road from north to south. The lorry belonging to the first respondent herein, according to him, suddenly took left turn without giving proper signal. As a result, the petitioner / claimant's two wheeler dashed against the lorry. He fell down and suffered multiple grievous injuries. He filed MCOP.No.620/2015 on the file of Motor Accidents Claims Tribunal, IV Additional Sub Judge,



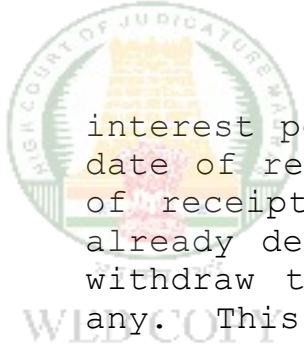
Madurai seeking compensation of Rs.12.00 lakhs. The Tribunal did not believe the version projected by the claimant. It awarded only a sum of Rs.50,000/- by applying "no fault theory". Aggrieved by the same, the claimant has preferred this appeal.

4.The claimant after meeting with the accident did not prefer police complaint immediately. Even though the accident took place on 07.04.2015, he appears to have given a complaint only a month later. The police have investigated the case and filed final report. But the claimant has now been charged under Sections 279, 337 of IPC. It is the appellant who is presently facing criminal proceedings. It is true that the Tribunal has to independently examine the issue of negligence uninfluenced by the criminal proceedings. In any event, the Criminal Court is yet to give its verdict. Be that as it may, the fact that the police have filed final report against the appellant cannot be lost sight of. The appellant in order to sustain his contention that he was not at fault, examined one Raja as PW.3. The said Raja deposed before the Court that he was also riding another two wheeler from behind and he saw the occurrence of the accident in the manner suggested by the appellant.

5.The Tribunal has given convincing reason for disbelieving the very presence of said PW.3 Raja. If the said Raja was really present on the spot, he would have certainly figured as witness in the police report. He admitted that he was not examined by the police. There is nothing on record to show that the said Raja called the Ambulance or that he took steps to admit the victim in the hospital. Therefore, the Tribunal rightly did not believe the version projected by the said PW.3. That apart, if the accident had occurred in the manner suggested by the appellant, the back portion of the lorry would not have suffered any damage. The lorry damaged only on the rear side back. Therefore, the version of the first respondent that the victim dashed against the parked lorry is more probable.

6.This Court will have to apply only the principle of preponderance of probability. The conclusion of Investigating officer is also that the lorry belonging to the first respondent was parked on the left side of the road and without noticing the same, the victim had dashed against it. The reasons assigned by the Tribunal are sound. I see no reason to take a different view. However, the Tribunal had awarded a sum of Rs.50,000/- to the injured claimant by applying no fault theory. This appeal is without any merit. The award dated 24.01.2017 made in M.C.O.P No.620 of 2015 on the file of the Motor Accidents Claims Tribunal/IV Additional Sub Judge, Madurai is confirmed.

<https://hcservices.courts.gov.in/hcservices/> The second respondent insurance company is directed to deposit the compensation as awarded by the Tribunal with 7.5%



interest per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, if the same has not been already deposited. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any. This civil miscellaneous appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

- 1.The IV Additional Subordinate Judge,  
Motor Accidents Claims Tribunal,  
Madurai.
- 2.The Record Keeper,VR Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Kumaravel, Advocate Sr.No.85104  
+1cc to Mr.S.Natarajan , Advocate Sr.No.85066

SKM

VB/MR/KKR/SAR2/21.11.2017/3P/5C

**C.M.A. (MD) No.799 of 2017**  
**02.11.2017**