

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1304 of 2005
and CMP.No. 7496 of 2005

The Divisional Manager,
Oriental Insurance Co.Ltd.,
Vellore .. Appellant/2nd Respondent

Vs.

1.Subramania Chettiar
2. R.Perumal .. Respondents/Petitioner &
1st Respondent

Prayer : Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.79 of 2001 on the file of the Motor Accidents Claims Tribunal (subordinate Judge) at Cheyyar, dated 30.04.2004.

For Appellant : Mr.M.Krishanmoorthy

For Respondents : No appearance

JUDGMENT

This Civil Miscellenous Appeal has been filed by the appellant/Oriental Insurance Company against the award dated 30.04.2004 made in MCOP. No. 79 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Cheyyar.

2. Heard the learned counsel appearing for the appellant and perused the materials available on record.

3. The appellant/Insurance Company is 2nd respondent in MCOP. No. 79 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Cheyyar. The 1st respondent has filed the said claim petition claiming a sum of Rs.35,50,000/- as compensation for the injuries sustained by him in the said accident that took place on 29.09.2000. The tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence on the part of

the driver of the lorry bearing registration no TSC 970 and directed both the 2nd respondent as well as the appellant-Insurance Company being insurer of the said lorry to pay jointly and severally, a sum of Rs.10,01,000/- as compensation to the 1st respondent/claimant. Challenging the liability fastened on them, by award dated 30.04.2004 made in MCOP. No. 79 of 2001, the appellant-Insurance Company has come out with the present appeal.

4. The learned counsel appearing for the appellant-Insurance Company contended that the claim application has to be dismissed on the point that the owner and insurance of the car, in which the claimant was travelled were not made as a party for proper adjudication. The Tribunal has also committed an error by fixing the liability on the driver of the lorry and since it is a head on collision, both the drivers ought to have held responsible for the accident. The other contentions raised by the appellant is with regard to the sum awarded by the Tribunal for disability and also fixing the monthly income for arriving the loss of income.

5. On perusal of the award, it is seen that on the side of the petitioner PW1 & PW2 were examined and Exhibits P1 to P26 were marked and on the side respondents RW1 was examined and exhibit R1 was marked. It is also seen that a case has been registered in the Solavaram Police Station against the driver of the lorry and no case has been registered against the driver of the car. Ex.P4- FIR also narrates that the lorry which was carrying sand driven in a rash and negligent manner and hit against the said car, driver of the car died on the spot. Even on perusal of the Investigation Report Exhibit R1, it is stated that after completion of enquiry, a case has been registered against the driver of the lorry, which belongs to the 2nd respondent before the the learned Judicial Magistrate No.2, Ponneri and the same is pending.

6. The only grievance of the appellant/Insurance Company of the lorry is that, it is a head on collision and hence the owner and insurer of the vehicles are to be added as party to the proceedings.

7. But the F.I.R, and Investigation report clearly proves that the negligence was only on the part of the driver of the lorry bearing registration no TSC 970 and hence, the finding of the tribunal in fixing liability on both the owner and insurer of the said lorry is found proper.

8. On the point of quantum, it is argued by the learned counsel for the appellant-Insurance Company that the injured person sustained only fracture injuries whereas, the disability was spoken by P.W.2 at 85% is highly exorbitant. It is also argued on the side of the appellant is that the monthly income taken by the tribunal at Rs.5,000/- is highly excessive without any proof for occupation and income Further, on perusal of the documents in respect of the injuries sustained by the claimant, it is seen there are only fracture injuries and the percentage taken by the tribunal at 85% is on the higher side and that needs to be modified. Hence, in view of absence of documents to prove the income of the deceased and considering the nature of the injuries and the disability assessed by P.W.2, this Court inclined to fix the monthly income at Rs.3,500/- and percentage at 50% and calculates the loss of income by adopting multiplier at Rs. 6,11,000/- which is proper and reasonable. In the absence of any documents and also by modified the disability at 50% and by confirming the sum awarded under 'pain and suffering' and 'medical bill', the sum calculated at Rs.6,11,000/- is quite reasonable.

9. Accordingly, this Court modifies the sum awarded by the tribunal as follows;

Heads	Compensation awarded by the tribunal (Rs.)	compensation modified by this Court (Rs.)
Loss of income	6,63,000	2,73,000
Pain and Suffering	5,000	5,000
Medical expenses	3,33,000	3,33,000
Total	10,01,000/-	6,11,000/-

10. In view of the above, the following order is made;

(i). The compensation is reduced from 10,01,000/- to Rs.6,11,000/-

(ii). The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(iii). The finding of the Tribunal in fixing the liability on the owner of the vehicle and insurer of the vehicle stands confirmed.

(iv) Since, this Court by order dated 26.04.2005 directed the appellant/Insurance Company to deposit the entire award amount passed by the tribunal, the appellant-Insurance Company is permitted to withdraw the remaining amount and the tribunal is directed to transfer the remaining award amount, if any as per the modified award passed by this Court to the claimant's bank thro RTGS within a period of two weeks from the date of

receipt of a copy of this order.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To
The Subordinate Judge,
Motor Accidents Claims Tribunal,
Cheyyar,

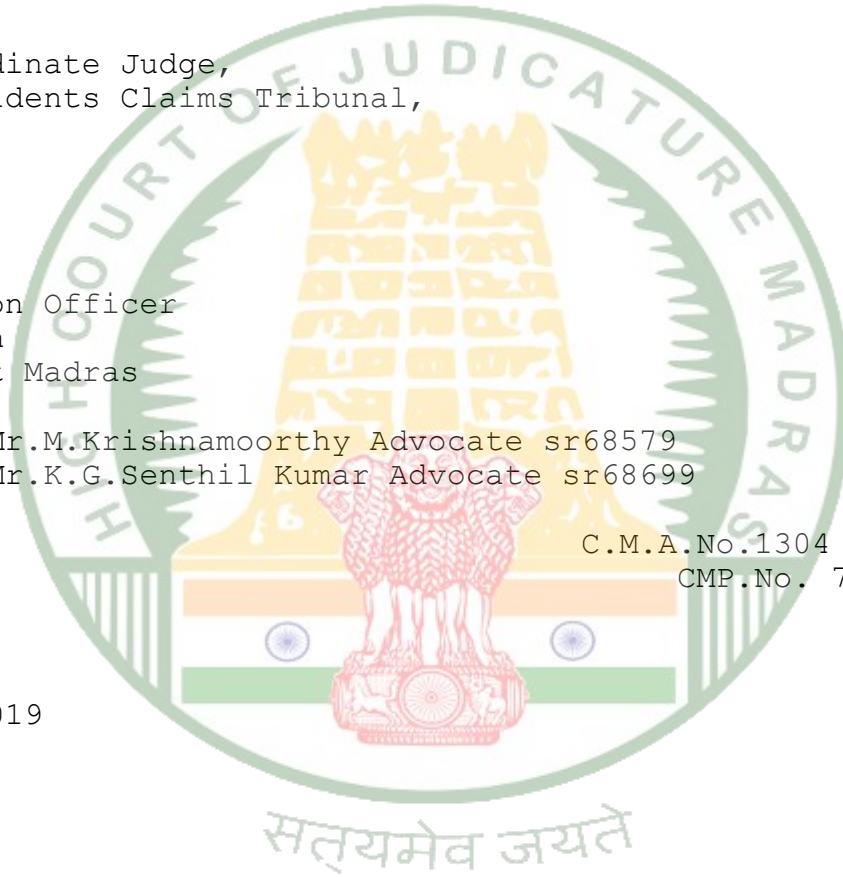
copy to

The Section Officer
VR Section
High Court Madras

+1 cc to Mr.M.Krishnamoorthy Advocate sr68579
+1 cc to Mr.K.G.Senthil Kumar Advocate sr68699

C.M.A.No.1304 of 2005 and
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