

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.11.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.962 of 2007

M/s.New India Assurance
Company Limited,
Vellore

.. Appellant / 2nd Respondent

Versus

1. R.Nagoor Basha .. 1st Respondent / Claimant

2. M.K.Metha Ramesh .. 2nd Respondent / 1st Respondent
(R2 set exparte)

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.11.2004 made in M.C.O.P.No.147 of 2002 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar.

For Appellant : Mrs.R.Sreevidhya

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.11.2004 made in M.C.O.P.No.147 of 2002 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Cheyyar.

2. The brief facts of the case are as follows :

On 19.08.2001 at about 2.30 p.m., the claimant was proceeding in his TVS Suzuki bearing Registration No.TN-21-T-4037, as a pillion rider, from Vandavasi to Melmaruvathur, at that time a TVS 50 vehicle bearing Registration No.TN-25-X-4827 came in a rash and negligent manner dashed against the vehicle, in which the claimant was travelling as a pillion rider. As a result, the claimant sustained injuries including fracture in the hands, injury on the head and immediately he was taken to Vandavasi Government Hospital and subsequently he was taken to Sri Ramachandra Hospital, Chennai for a treatment. The claimant has claimed a sum of Rs.5,00,000/- as compensation.

3. The appellant/Insurance Company, in the counter statement, has denied the mode of accident and the sum claimed as compensation for the injury, loss of income and other aspects are excessive. It is also stated that the rider of the TVS 50 was not possessing any valid license at the time of accident. The further averment made by the appellant is that the owner of the two wheeler, in which the claimant was travelled as a pillion rider was added as necessary party. Hence, the claim application has to be dismissed.

4. The Tribunal, upon analyzing the evidence and documents placed before it, has given a finding that, it is the rider of the two wheeler bearing Registration No.TN-21-T-4037 had caused the accident and accordingly fixed the liability on the Insurance Company and also observed that no way the owner and the insurer of the vehicle bearing Registration No.TN-25-X-4827 of the TVS 50 be a party of the claim application.

5. With regard to the sum awarded as compensation, the tribunal has by taking into considering the age of the injured and also the disability spoken by the witness had assessed the monthly income based on the occupation of the claimant and arrived a sum of Rs.2,99,400/- as compensation under the following heads ;

Heads	Sum awarded by the Tribunal (Rs.)
Loss of Income (Rs.3,000 * 12 = 36,000/-) (Rs.36,000*17*45%)	2,75,400.00
Pain and Suffering	5,000.00
Medical Expenses	19,000.00
Total Compensation	2,99,400.00

Aggrieved against the said Judgment and Decree, the appellant/Insurance Company has preferred this appeal.

6. In the grounds of appeal, the appellant has aggrieved over the determination of the compensation by the Tribunal by adopting the multiplier method. The disability assessed by the Doctor was also very much disputed by the appellant. The sum

awarded for medical expenses and the loss of income arrived was also very much disputed by the appellant in this appeal. The appellant has argued that in the absence of any income proof, the tribunal has fixed the monthly income of the injured person and also for the minimum disability, the sum arrived by adopting the multiplier method is not proper and justified.

7. On a perusal of the records, it is observed that the claimant sustained fracture in his right hand and also sustained severe injury on his head. P.W.2-Doctor, who was examined before the Tribunal has spoken about the disability sustained by the claimant and assessed the disability at 45% and issued Ex.P10-Disability Certificate. On verifying the claim application, the claimant has stated that he was running a hotel and his monthly income is at Rs.15,000/-. In the absence of the relevant documents, the Tribunal has taken monthly income at Rs.3,000/- by taking his age as 32 years. The monthly income taken by the Tribunal at Rs.3,000/- for a 32 years old person is not on the higher side.

8. The argument advanced by the appellant/Insurance Company is that in the absence of any proof of income and age, the income determined by the Tribunal is excessive. In this aspect, this Court is of the considered view that when a man who do coolie work can earn Rs.100 per day, the sum fixed by the tribunal for a person who is running a hotel is not on the higher side. It is also seen that the claimant has sustained fracture and also head injury hence the disability assessed by the Doctor at 45% is not on higher side. Likewise, based on the evidence and documents, the loss of income arrived by applying proper multiplier is also fixed reasonable at Rs.2,75,400/-. The sum awarded under the heads medical expenses as per Exs.P6 to P9 are for pain and suffering are also proper and reasonable.

9. Therefore, this Court is of the considered view that the findings given by the Tribunal are based on the evidence and documents, hence, no interference is called for in the order of the Court below. The order of the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs.

10. The Appellant/Insurance Company is directed to deposit the entire Award amount awarded by the Tribunal along with interest as awarded by the Tribunal, after adjusting the amount,

already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent/claimant is directed to withdraw the amount on making appropriate application. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pds/lpp

To

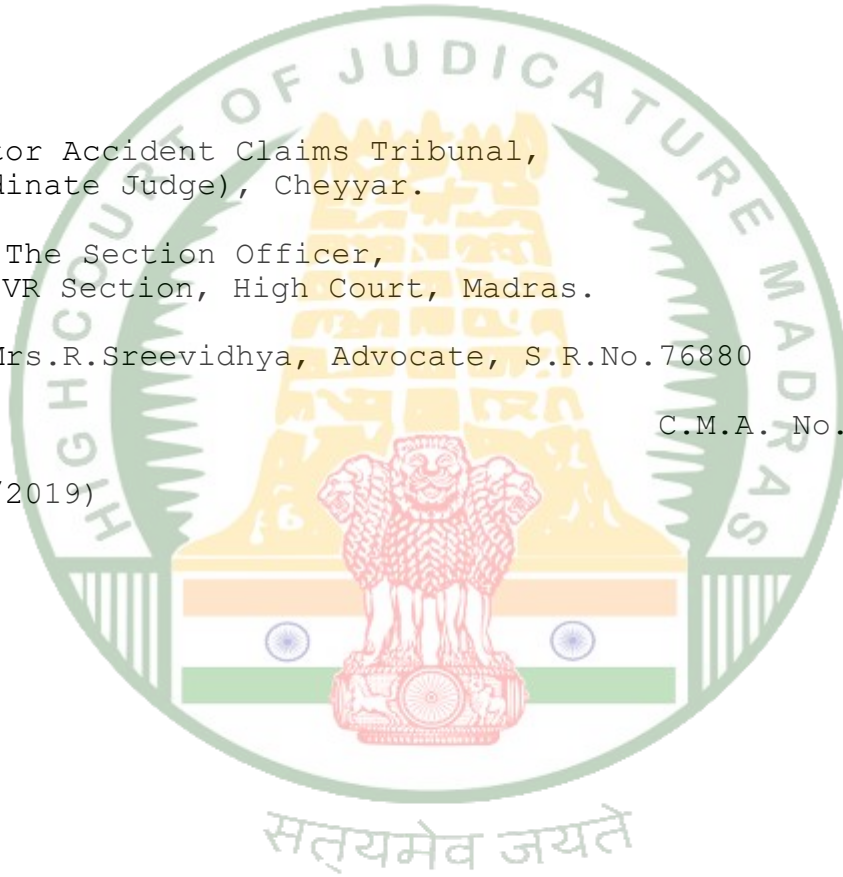
1. The Motor Accident Claims Tribunal,
(Subordinate Judge), Cheyyar.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mrs.R.Sreevidhya, Advocate, S.R.No.76880

C.M.A. No.962 of 2007

VD(CO)
SSM(10/06/2019)



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