

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1458 of 2018
and
CMP.No.11614 of 2018

1.The District Collector,
Ariyalur District.

2.The Special Tahsildar,
Senthurai Taluk,
Ariyalur District.

... Appellants/Respondents

..vs..

Mathiyazhagan

... Respondent/Claimant

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 29.08.2016, made in MCOP.No.187 of 2014 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate), Ariyalur.

For Appellant : Mr.M.Venkateshkumar
Government Advocate

Respondents : Mr.S.Kamadevan

JUDGMENT

Aggrieved over the finding of the Tribunal dated 29.08.2016, made in MCOP.No.187 of 2014 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate), Ariyalur, the respondents filed this present appeal for setting aside the award passed by the Tribunal.

2.Both side consent, this appeal is disposed of by this Court at the stage of admission itself.

3.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4.The case of the petitioner is that on 02.04.2014, while the petitioner was walking along the Allinagaram Main Road, around 9.00 p.m., the first respondent vehicle bearing Registration No.TN-46-G-0184, came at high speed in a rash and negligent manner, dashed against the petitioner causing him fracture in his left leg, grievous injuries on his head and other parts of the body. Immediately after the accident, the petitioner was given first aid in Government Hospital, Ariyalur and thereafter took treatment in Kavery Hospital, Trichy wherein surgery was conducted in his left leg and plate was implanted. The petitioner after undergoing treatment as inpatient was discharged on 14.04.2014. The accident occurred only due to the negligence of the respondents vehicle driver. The petitioner was aged 61 years and by working as mason as well as agriculturist was earning a sum of Rs.18,000/- per month. Due to the fracture in the left leg, he is not able to carry on his avocation resulting in loss of income. Thus, the petitioner sought for a sum of Rs.7,00,000/- as compensation from the respondents, who are the owner/state of the offending vehicle.

5.On the other hand, opposing the claim petition, the Second respondent/owner contends that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner about his age, avocation and income is denied. The accident occurred only due to the negligence of the petitioner who suddenly crossed the road without noticing the on coming vehicle. The petitioner's negligence is the sole reason for the accident. The claim of the petitioner is exorbitant. Thus, the respondents/owner sought for dismissal of the petition.

6.Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert as P.W.2 and P.W.3, produced documents Ex.P1 to Ex.P10 to prove his claim. The respondents examined R.W.1 and produced Ex.R1 document to contradict the claim of the petitioner.

7.The Tribunal, on the basis of materials available on record, found the negligence of the respondents vehicle driver alone caused the accident, passed an award for a sum of Rs.3,26,000/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the respondents/owner/State has come forward with this present appeal.

8.Heard the learned counsel appearing for the Appellants/respondents and the learned counsel appearing for the respondent/petitioner and perused the materials available on record.

9.The learned counsel appearing for the Appellant/Owner/respondent contends that the Tribunal failed to consider the evidence properly and wrongly fixed the negligence on the respondents vehicle driver. The Tribunal ought to have concluded that the accident occurred only due to the petitioner's attempt to cross the road suddenly without observing the on coming traffic. The amount awarded by the Tribunal is highly excessive. Thus, the Appellant/respondents sought for setting aside the award passed by the Tribunal by entertaining the appeal.

10.Per contra, the learned counsel appearing for the respondent/claimant/petitioner contends that the Tribunal has correctly appreciated the evidence on record, fixed the negligence on the respondents vehicle driver and there is no need to interfere with the same. The quantum of award passed by the Tribunal is very nominal. Thus, the petitioner/claimant sought for dismissal of this appeal.

11.The appeal is mainly on the issue of negligence and liability. The petitioner who deposed as P.W.1 clearly stated that while he was walking along the Allinagaram Main Road, from North to South, on his way back from cattle shed, opposite to his house, around 9.00 p.m., the respondents vehicle came at high speed dashed on him causing injuries to him. The Police also registered Ex.P1 First Information Report against the respondents vehicle driver only. The contents of Ex.P1 First Information Report corroborate the evidence of P.W.1. Further, nothing was elicited during the cross examination of P.W.1 to disbelieve his evidence. Even though, the respondents examined the vehicle driver as R.W.1 and he stated that only because the petitioner tried to cross the road without observing the traffic rules the accident occurred, no explanation was given by him (R.W.1) as to why no complaint was lodged against the petitioner stating the above fact. Assuming the accident occurred as claimed by the respondents, the police would not have registered the first information report against the respondents vehicle driver.

12.It is also pointed out that prior filing of the claim petition, the petitioner issued Ex.P8 legal notice to the respondents, but there is no reply from the respondents. The said Ex.P8 legal notice was admitted by the respondents. Nothing is stated in the counter or in the oral evidence of the respondents about the failure to give any reply to Ex.P8 legal notice. As such, the respondents has not produced any material to conclude that only due to the sudden crossing of the petitioner, the accident occurred. On the other hand, it is clear from the evidence of P.W.1 and the contents of Ex.P1 First Information Report that the accident occurred due to the

negligence of the respondent vehicle driver. In such circumstances, no ground was made out by the respondent/owner to set aside the conclusion arrived at by the Tribunal that negligence of the respondents vehicle driver alone caused the accident. As such, it is clear that the respondent vehicle driver negligence alone caused the accident.

13. Both sides have not seriously disputed the quantum of compensation awarded by the Tribunal. It is clear from the evidence of P.W.1, Ex.P2 Accident Register and Ex.P4 Discharge Summary that the petitioner suffered segment fracture both bone left leg with compartment syndrome and also abrasion over left side forehead, which are grievous in nature. The petitioner underwent two surgeries on 03.04.2014 and 09.04.2014. He also underwent treatment as inpatient at Kaveri Hospital, Trichy from 03.04.2014 to 14.04.2014. Thereafter, he took treatment as out patient till 19.05.2014. The petitioner clearly stated that he suffered physical disability and he is unable to carry on his avocation as mason and agriculturist. To prove the said contention, the petitioner examined P.W.3 Doctor, who has treated the petitioner at Government Hospital, Ariyalur and issued Ex.P2 AR copy. According to him, due to the injuries suffered, the petitioner was find it difficult to stand, sit down and walking for long time. On physical examination of the petitioner and also by taking Ex.P9 X-ray, P.W.3 assessed the disability at 42% and issued Ex.P10 Disability Certificate. The Tribunal considering the fact that there was a fracture on the left leg both bone and consequently, the petitioner is having difficulty in walking, standing and sitting down and in the absence of any contra evidence found the disability assessed by P.W.3 is appropriate and fixed the disability suffered by the petitioner at 42%. The Tribunal also considering the fact that the accident took place in the year, 2014 and there was no proof of functional disability suffered by the petitioner, provided for compensation at the rate of Rs.3,000/- per percentage, awarding a sum of Rs.1,26,000/- (Rs.3000/- x 42) on disability compensation. The Tribunal, considering the medical expenses claimed by the petitioner and on the basis of Ex.P4 and Ex.P7 Medical Bills, provided for a sum of Rs.1,25,000/- towards medical expenses. The same is appropriate. The amount awarded by the Tribunal under the other heads appears to be nominal. There is no specific reason pleaded by the respondents/owner to modify the amount provided by the Tribunal under different heads and the quantum arrived at by the Tribunal is just and proper. The same needs no interference. In the light of the above discussion, this Court find no merits in the appeal and the same is liable to be dismissed.

14. In the result, this appeal is dismissed. No costs. The order and decretal order dated 29.08.2016 made in MCOP.No.187 of 2014 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Ariyalur, is hereby confirmed. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Ariyalur.

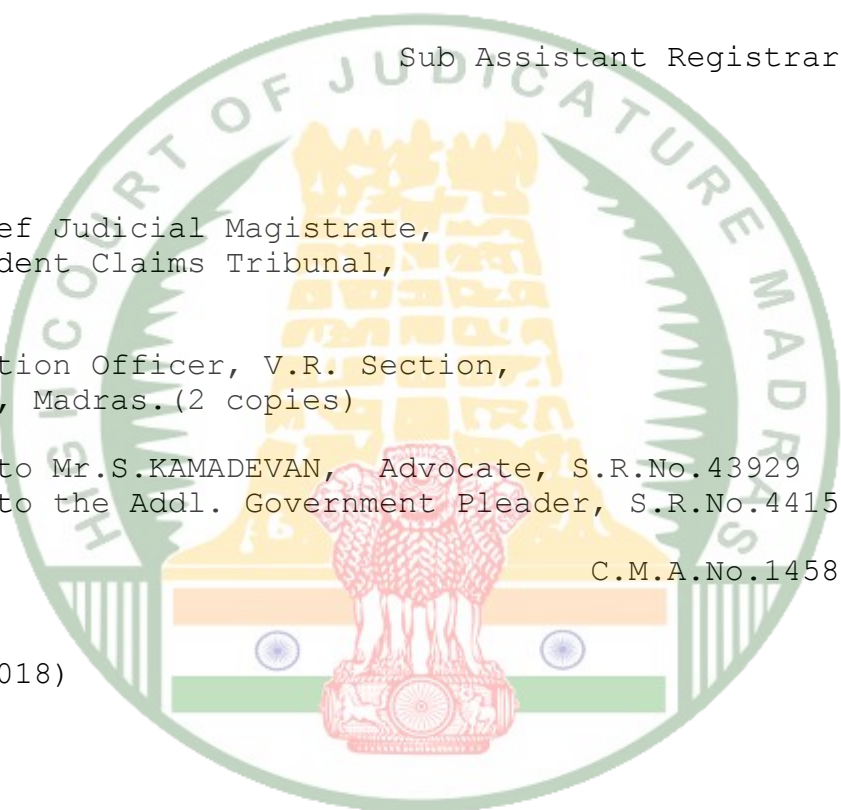
2. The Section Officer, V.R. Section,
High Court, Madras. (2 copies)

+1cc to Mr.S.KAMADEVAN, Advocate, S.R.No.43929

+1cc to the Addl. Government Pleader, S.R.No.44151

C.M.A.No.1458 of 2018

sv (CO)
TR(23/08/2018)

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