

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.496 of 1998 and 114 of 2006

1. C.Rangaraj .. Appellants in CMA.No.496 of 1998

2. Executive Officer,
Cantonment Board,
Wellington Post, Nilgiri ... Respondents 1 & 2 in
CMA.No.114/2006

Vs

1.Som Prakash Sharma ... 1st Respondent in CMA.496/1998
...Appellant in CMA.No.114/2006

2. M/s. National Insurance Company Ltd.,
represented by its Branch Manager,
Green Fields, Udagamandalam, Nilgiri.
...2nd Respondents in
CMA.No.496 of 1998
3rd Respondent in CMA.No.114/2006

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.11.1997 made in M.A.C.O.P.No.214 of 1996, on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Udagamandalam.

For Appellants : Mr.M.Vijayan for M/s. King & Partridge
in CMA.No.496 of 1998
: Mr.R.Malaichamy
in CMA.No.114 of 2006

For R1 : Mr.R.Malaichamy
in CMA.No.496 of 1998

For R2 : Mr.S.Arunkumar
in CMA.No.496 of 1998

For R1 & R2 : Mr.M.Vijayan for M/s. King & Partridge
in CMA.No.114 of 2006

For R3 : Mr.S.Arunkumar
in CMA.No.114 of 2006

C O M M O N J U D G M E N T

These two Civil Miscellaneous Appeals arise out of a common Judgment dated 24.11.1997 in M.C.O.P.No.214 of 1996 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Udagamandalam (for brevity, "the Tribunal"). Hence, they were heard together and are being decided by this common judgment.

2.CMA.No.496 of 1998 is preferred by the driver and owner of the vehicle involved in the accident, contending that the compensation of Rs.1,50,000/- awarded by the Tribunal is excessive and exorbitant. Whereas, CMA.No.114 of 2006 is filed by the claimant seeking enhancement of the compensation so awarded by the Tribunal.

3.The facts leading to the filing of the present appeals are as follows:-

On the fateful day, i.e., on 21.12.1993 at about 2.00pm, the appellant in CMA.No.114 of 2006/first respondent in CMA.No.496 of 1998, was riding his scooter bearing registration No.WB 72 0084. When he was going towards Gurka Hill, a Jeep belonging to the second respondent and insured with the third respondent insurance company in CMA.No.114 of 2006, came from the opposite direction in a rash and negligent manner and dashed against the Scooter. As a result of the same, the appellant in CMA.No.114 of 2006 sustained grievous injuries, for which, he filed a claim petition, claiming compensation of Rs.11,00,000/-. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.1,50,000/- with interest at 12% per annum from the date of petition. Challenging the same, the present appeals came to be filed before this Court.

4.The learned counsel for the claimant/appellant in CMA.No.114 of 2006/first respondent in CMA.No.496 of 1998 submitted that the compensation awarded by the Tribunal is inadequate considering the nature of the injuries sustained by the claimant and hence, the same has to be enhanced substantially.

5.On the other hand, the learned counsel for the appellants in CMA.No.496 of 1998/respondents 1 and 2 in CMA.No.114 of 2006 submitted that the Tribunal has erred in holding that the accident had occurred due to the rash and negligent driving of the driver of the jeep. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

6.Heard the learned counsel for the second respondent in CMA.No.496 of 1998/third respondent in CMA.No.114 of 2006/insurance company, who submitted that after properly analysing the materials and evidence, the Tribunal has rendered

its finding on negligence and awarded the just compensation and hence, the same do not require any interference in the hands of this Court.

7.This Court considered the submissions made by all the parties and perused the materials available on record.

8.As regards the negligence, the Tribunal has placed reliance on P.W.1/claimant and Ex.A1 -First Information Report and Ex.A5-charge sheet, as per which, the driver of the jeep was responsible for the accident and he was subjected to criminal prosecution for the offences under Sections 279 and 338 IPC. Taking note of the further fact that the driver of the jeep was subsequently, convicted for the said offence, the Tribunal has ultimately come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the jeep. In the absence of any contra evidence, the finding so rendered by the Tribunal, in the opinion of this Court, is perfectly justifiable and hence, the same need not be interfered.

9.In respect of the quantum of compensation, the Tribunal has awarded the total compensation of Rs.1,50,000/- to the claimant. P.W.1/claimant in his evidence, deposed that he was aged 37 years and was earning a sum of Rs.7,500/- per month; in the accident, he sustained multiple injuries and his right leg was shortened by 2.5 inch and the movement of the same was restricted. To substantiate the nature of the injuries and the treatment taken, he produced Exs.P6 to P11 medical reports. Considering the materials and evidence adduced by the claimant, the Tribunal has awarded Rs.1,25,000/- towards loss of income due to permanent disability and pain and suffering and Rs.25,000/- towards extra nourishment, in totalling Rs.1,50,000/-, which in the opinion of this Court, is slightly on the lower side and hence, the same is hereby enhanced to Rs.2,00,000/- by adding Rs.50,000/- towards mental agony, having regard to the gravity of the injuries sustained by the claimant and loss of earning capacity suffered by him. However, it is made clear that the compensation of Rs.1,50,000/- awarded by the Tribunal shall carry interest at 12%pa from the date of claim petition and the enhanced sum of Rs.50,000/- by this Court, shall carry interest only at 7.5%pa from the date of filing of the appeal in CMA.No.114 of 2006.

10.In fine, CMA.No.114 of 2006 is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.1,50,000/- to Rs.2,00,000/-. The respondents 1 to 3 in CMA.No.114 of 2006 are directed to deposit the entire compensation amount as awarded by this Court, along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy

of this Judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the claimant, through RTGS within a period of one week thereafter. Consequently, CMA.No.496 of 1998 stands dismissed. No costs.

-s/d-
Assistant Registrar(CSVIII)

True Copy

Sub-Assistant Registrar

av

To

1. The Motor Accident Claims Tribunal,
Sub-Judge, Ootagamandalam

2.The Section Officer,
VR Section,
High Court, Madras.

+2 ccs to M/s.King & Patridge Advocate sr62618 & 62619

+2 ccs to M/s.R.Malaichamy Advocate sr62458 & 62459

+1 cc to M/s.S.Arunkumar Advocate sr62449

C.M.A.Nos.496 of 1998 &
114 of 2006

gp(co)
aa07/01/2021

सत्यमेव जयते
WEB COPY