

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2780 of 2003

The New India Assurance Co. Ltd.,
No.46, Second Line Beach, Moore Street,
Chennai-1. .. Appellant /2nd Respondent

Vs.

1.R.Palani ... 1st Respondent/Petitioner

2.R.Shanmugam ... 2nd Respondent/1st Respondent

(2nd respondent was transposed as appellant and
the appellant was transposed as 2nd respondent vide
order of the Court dated 08.08.2011 made in
C.M.A.No.2780 of 2003 (Memo filed on 08.08.2011)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 19.04.2002 made in M.A.C.T.O.P.No.4786 of 1998 on the file
of the Motor Accidents Claims Tribunal, V Judge, Court of Small
Causes, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.Mazhaimeni Pandian

J U D G M E N T

The appellant insurance company has preferred this appeal,
challenging the order dated 19.04.2002 passed in MCOP NO.4786 of
1998, whereby the Tribunal has awarded a total compensation of
Rs.3,89,500/- as against the claim of Rs.5,00,000/- made by the
first respondent/claimant for the injuries sustained by him in a
motor vehicle accident that had occurred on 24.2.1998. The
break-up details of the compensation read as follows:

S.No.	Heads	Compensation (Rs.)
1.	Future loss of earning power due to disability	3,00,000/-
2.	Medical Expenses	2,500/-
3.	Transportation Expenses	2,000/-
4.	Loss of Earning during treatment period	18,000/-
5.	Permanent Disability	50,000/-
6.	Extra nourishment	2,000/-
6.	Pain and Suffering	15,000/-
	Total	3,89,500/-

2. According to the learned counsel for the appellant/Insurance Company, the Tribunal ought to have dismissed the claim petition since the claimant was solely responsible for the accident, as he drove the auto with uncontrollable speed and dashed against the rear side of a parked lorry and caused injuries to the driver and cleaner, who were changing the punctured wheel of the stationed lorry. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent/claimant and hence, the same has to be reduced substantially.

3. Per contra, the learned counsel appearing for the 1st respondent/claimant submitted that based on the materials and evidence adduced by the parties, the Tribunal has considered each and every aspects and awarded the just compensation and hence, the same do not call for any interference at the hands of this Court.

4. Heard both sides and perused the records.

5. P.W.1/first respondent/claimant has deposed in his evidence that on 24.2.1998 at about 2.00 hours, while he was driving in his auto bearing Regn.No.TN07 Y 5059 from Mannurpet to Ambattur in MTH Road, he was hit by another auto bearing Regn.No.TN02 C 2435, due to rash and negligent driving by its driver; as a result of the same, he sustained grievous injuries. Ex.P1-First Information Report supported the narration of P.W.1 with regard to the manner of accident, as per which, the case was registered against the driver of the auto bearing

Regn.No.TN02 C 2435. Though it was contended that the first respondent/claimant/driver of the auto bearing Regn.no.TN07 Y 5059 was solely responsible for the accident, there was no concrete material produced to substantiate the same. In the absence of any contra evidence, the Tribunal, based on the available material and evidence, has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the auto bearing Regn.No.TN02 C 2435 and accordingly, directed the appellant insurance company to pay compensation, which this Court is not inclined to interfere.

6.As regards the quantum of compensation, P.W.1/claimant has stated in his evidence that he was aged 32 years and was earning Rs.150/- per day by driving auto; due to the injuries sustained in the accident, he lost his vision in right eye and also sustained fracture in nasal bone and mandible. To support his version about injuries, P.W.2 to P.W.4/doctors were examined, who issued Exs.P5 (25%), P7 (30%) and P8 (35%) disability certificates respectively. Placing reliance on those materials and evidence, the Tribunal has awarded the total compensation of Rs.3,89,500/-. This Court is of the opinion that the quantum so determined by the Tribunal is fair, just and reasonable and the same cannot be treated as excessive or exorbitant at any stretch of imagination, having regard to the nature of the injuries and percentage of disability sustained by the first respondent/claimant and hence, the same need not be interfered.

7.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. The first respondent/claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk / rst/rk

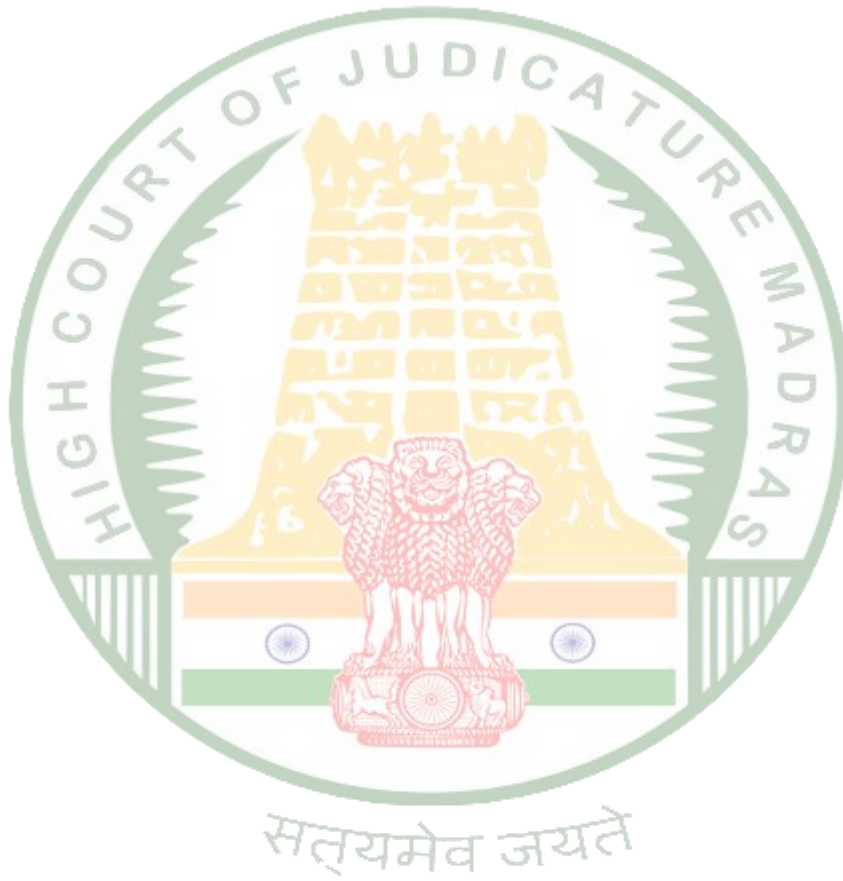
To

1.The V Judge, Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.2780 of 2003

BR(CO)
CB(03/03/2020)



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