

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2289 of 2006

S.Nandakumar

... Appellant / Petitioner

Vs

1. A.Rajendran

2. A.M.Selvaraj

3. National Insurance Company Ltd
272, 273, Mettur Road
Palaniappa Complex
Erode - 11

4. The New India Assurance Company Ltd
Erode

... Respondents / Respondents

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 25.07.2005 made in MCOP No.175 of 2004 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Judge, Erode.

For Appellant : Mr.V.Ayyadurai

For Respondent : Mr.S.Manohar - for R4

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant/claimant as against the award dated 25.07.2005 passed in MCOP No.175 of 2004 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Judge, Erode.

2.The facts of the case are that on 16.06.2003 at about 11.00 a.m., the appellant was riding his Yamaha Motorcycle bearing Reg.No.TN 33 P 9010 on the Kani Ravuthar Kulam Pirivu Road. At that time, the lorry bearing Reg.No.TCQ 59, belonging to the second respondent and insured with the third respondent Insurance Company, came from behind in a rash and negligent manner and dashed against the motorcycle, due to which the appellant herein was thrown away from the Motorcycle and

sustained grievous injuries . He filed a claim petition before the Claims Tribunal and based on the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.70,255/- with interest at the rate of 7.5% per annum from the date of petition.

3. Aggrieved over the said award, the appellant herein / claimant preferred an appeal before this Court.

4. The learned counsel for the appellant / claimant submitted that the Tribunal having found that the appellant has suffered 20% permanent partial disability, erred in holding that such disability would not entitle the appellant to claim for loss of earning power. He further submitted that the Tribunal ought to have awarded a sum of Rs.5,00,000/- in toto.

5. Per contra, the learned counsel for the 4th respondent Insurance Company submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation which is just and reasonable, and hence the judgment of the Tribunal need not be interfered with by this Court.

6. Heard the learned counsel for the appellant as well as the fourth respondent and perused the materials available on record.

7. On a perusal of the award passed by the Tribunal, it is evident that towards fastening the liability on the fourth respondent Insurance Company, the Tribunal has relied upon Exs.P.1 to P5 and the evidence of PW 1. The Tribunal has also discussed in detail about the manner in which the accident took place. The Tribunal has also taken note of the fact that the driver of the lorry has accepted the guilt and paid the fine amount before the Criminal Court. In the absence of any contra evidence on the side of the Insurance Company, the Tribunal has fixed the negligence on the driver of the lorry and fastened the liability on the fourth respondent Insurance Company. This Court is not inclined to interfere with such factual finding arrived at by the Tribunal.

8. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has awarded a sum of Rs.55,255/- towards medical expenses, which is an actual expenditure and Rs.15,000/- towards loss of earning during the treatment period. The Tribunal has observed in paragraph 9 of the award that the appellant herein has suffered 20% permanent disability. Having observed so, no amount was awarded by the Tribunal towards permanent disability. It is not in dispute that the claimant has suffered fracture over the right wrist, bleeding injuries over the upper lip, nose. It is also stated by

PW2-Doctor that the appellant herein has sustained severe head injury, for which he required medical treatment for a certain period. Hence, the Tribunal ought to have awarded some amount towards future medical expenses and pain and sufferings. Considering the injuries suffered by the claimant and also the materials and evidence adduced on record, awarding a sum of Rs.2,000/- towards transport expenses, Rs.20,000/- towards permanent disability, Rs.3,000/- towards future medical expenses and Rs.10,000/- towards pain and suffering, would meet the ends of justice. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Medical expenses	55,255/-
Loss of earning during treatment period	15,000/-
Transport expenses	2,000/-
Permanent disability	20,000/-
Future medical expenses	3,000/-
Pain and suffering	10,000/-
TOTAL.....	1,05,255/-

9. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the quantum of compensation from Rs.70,255/- to Rs.1,05,255/-. It is made clear that only for the compensation of Rs.70,255/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.35,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. No costs.

10. The 4th respondent / Insurance Company is directed to deposit the enhanced compensation amount as ordered above, 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

appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal/
Principal Subordinate Judge, Erode.

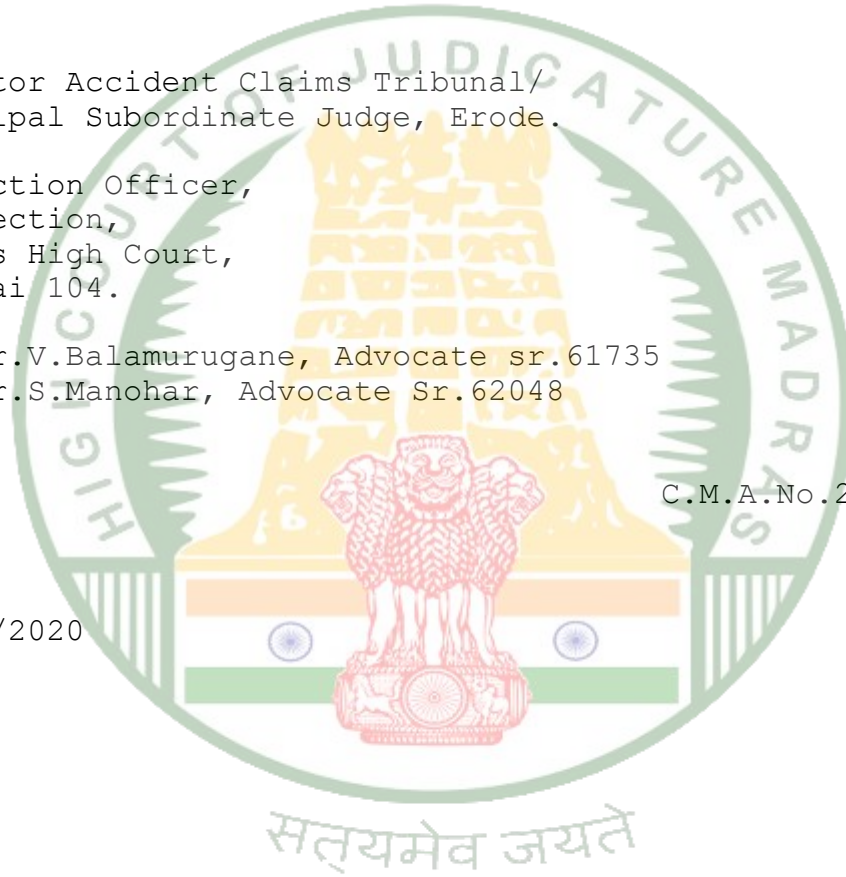
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+1cc to Mr.V.Balamurugane, Advocate sr.61735

+1cc to Mr.S.Manohar, Advocate Sr.62048

C.M.A.No.2289 of 2006

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