

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2716 of 2007
and M.P.No.2 of 2007

National Insurance Company Ltd.,
No.165, Nethaji Road
Manjakuppam
Cuddalore-607 001. ... Appellant /2nd Respondent

Vs

1.Masilamani ...1st Respondent/Claimant

2.K.Thirumurugan ... 2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 26.10.2006 made in OP No.328 of 2005 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Cuddalore.

For Appellant : Mr.D.Bhaskaran

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.97,500/- towards compensation to the first respondent / claimant due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 06.01.2004, at about 5.00 p.m., the first respondent / injured was standing at Semmandalam, Cuddalore. At that time, the motorcycle bearing Reg.No.TN-31-E-4446, belonging to the second respondent, came from North to South direction at high speed in a rash and negligent manner and dashed against the injured. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal. On consideration of

the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.97,500/- interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in coming to the conclusion that the motorcycle rider had caused the accident, in the absence of any substantial proof to that effect. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.This appeal was admitted in the year 2007. Till now, the appellant Insurance Company has not taken steps to serve papers to the other side.

7.With regard to negligence aspect, considering the fact that a complaint has been given in respect of the accident, by the friend of the first respondent / claimant, before the Cuddalore New Town Police Station, based on which the First Information Report has been filed, and taking note of Ex.P6-Motor Vehicle Inspector Report and the failure on the part of the Insurance Company in not examining the driver of the motorcycle, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the motorcycle. This Court is not inclined to interfere with the said finding.

8.Ex.P5 is the Wound Certificate. P.W.2 is the Dentist. Ex.P8 is the Disability Certificate given by P.W.2. P.W.3 is the Orthopaedician. Taking note of Ex.P5, Ex.P8 and also the deposition of P.Ws.2 and 3, the Tribunal awarded a sum of Rs.10,000/- towards pain and suffering, Rs.2,000/- towards extra nourishment, Rs.3,000/- towards Attender Charges, Rs.75,000/- towards loss of earning power and Rs.7,500/- towards loss of income during the treatment period. The amounts awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy

of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

KM

To

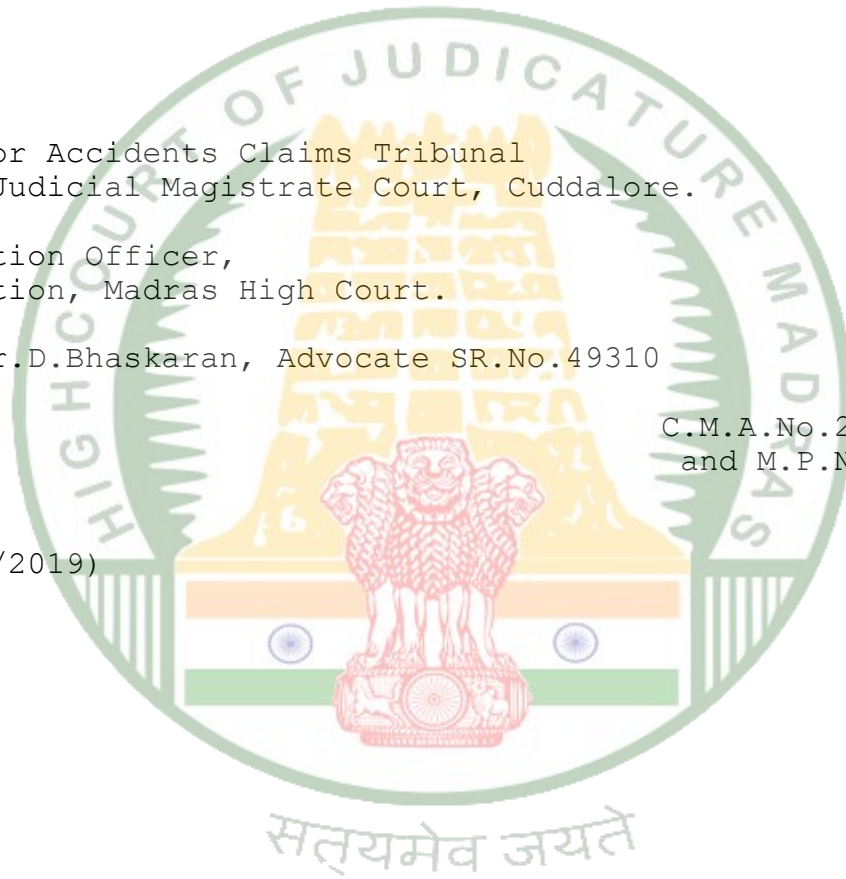
1.The Motor Accidents Claims Tribunal
Chief Judicial Magistrate Court, Cuddalore.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.49310

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VBA (CO)
GMY (23/10/2019)



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