

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1760 of 2008
and
M.P.No.1 of 2008

The Branch Manager,
National Insurance Co.Ltd.,
III Floor, Opp to Raj Theatre,
Bangalore Road, Krishnagiri - 635 001.

.... Appellant/
3rd Respondent

Vs.

1.G.Veerapan

...1st Respondent/Claimant

2.T.Nallappa

3.P.V.Kaveri

... Respondents 2 & 3/
Respondents 1 & 2

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.09.2007 made in MCOP No.166 of 2005 on the file of the Motor Accident Claims Tribunal, (Subordinate Court) Hosur.

For Appellant : Mr.S.Vadivel

For R-1 : Mr.V.Kumaravalavan

For R-2 and R-3 : No Appearance

J U D G M E N T

This appeal is directed against the judgment and decree made in MCOP No.166 of 2005, dated 13.09.2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur.

2. As against the claim made for a sum of Rs.5,00,000/-, in respect of the injuries sustained by the claimant/first respondent herein, in an accident that took place on 11.06.1998 between the motorcycle bearing Registration No.TN29/U-2459 (in

which the claimant was a pillion rider) and the lorry bearing Registration No.TN-04-0540, the Tribunal has awarded a sum of Rs.1,81,000/- with interest at the rate of 9% per annum from the date of claim petition.

3. The Tribunal based on the documents and evidence adduced by both sides, has fixed the negligence on the part of the rider of the TVS-Suzuki two-wheeler which was ridden by its rider in a rash and negligent manner and directed the driver, owner and the appellant Insurance Company to pay compensation to the claimant, jointly and severally.

4. Heard the learned counsel for the appellant as well as the first respondent/claimant and perused the materials available on record.

5. The learned counsel for the Appellant/Insurance Company submitted that the Tribunal ought not to have relied upon the evidence of PW.2 (Doctor), since, admittedly, the accident had happened on 11.06.1998, but he (P.W.2) seemed to have examined the first respondent/claimant on 19.02.2007, i.e., after a period of nine years of the accident. He further submitted that there was a delay in filing the FIR and that the compensation awarded by the Tribunal is on the higher side.

6. Per contra, the learned counsel for the first respondent/claimant submitted that the injuries sustained by the first respondent were grievous in nature; the Tribunal has analysed the materials on record in a threadbare manner and awarded the just compensation, which does not require any interference by this Court.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. Before the Tribunal, the claimant himself was examined as PW.1 and one Dr.T.V.Gandhi was examined as PW.2, who has given the disability certificate to the first respondent herein. On the side of the claimant, Exs.P-1 to P-3 were marked. On the side of the appellant herein, one D.Manivel was examined, but no documents were marked.

9. As far as the issue of fastening the negligence on the rider of the TVS-Suzuki motorcycle is concerned, the Tribunal, while analysing the factum/manner of accident, has ultimately held that the Insurance Company has failed to examine the rider of the motorcycle to prove the negligence on his part and that had the rider of the motorcycle been examined, the factum of negligence on the part of the rider of the motorcycle would have

come to light. The Tribunal has also given convincing reasons for the delay in filing the FIR. This Court is not inclined to interfere with the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle, since the said finding has been rendered on a proper analysis of the materials and evidence adduced on record.

10. As far as the quantum awarded by the Claims Tribunal is concerned, it has fixed the monthly income of the claimant at Rs.3,500/- earned by way of seasonal business (instead of Rs.6,600/- as claimed by the claimant) and quantified the compensation towards disability at Rs.1,68,000/- adopting the multiplier of 16 and fixing the disability at 25%, though the disability was assessed by the Doctor at 30%.

11. It is borne out from the records that the claimant/first respondent sustained the following injuries:-

- "1. Crush injury tip of II and III toe distal to middle of toes phalanx exposed bleeding + in left foot amputation of II and III toes distal phalanx done.
2. Fracture of II and III Terminal Phalanx of the left foot.
3. Fracture of medial malleolus of left tibia.
4. Contusion left foot.
5. Multiple injuries all over the body."

12. It is apparent that with the above disabilities/discomforts, the first respondent herein has to lead his entire life. The other heads under which, the Tribunal has awarded the compensation are medical expenses at Rs.3,000/-, transport expenses and extra nourishment at Rs.5,000/-, pain and suffering at Rs.5,000/-, thus quantifying the total compensation at Rs.1,81,000/-. The sum quantified by the Tribunal, in the considered view of this Court, is just and reasonable and hence, the same does not require any interference.

13. In the result, affirming the award of the Claims Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company shall deposit the compensation amount, along with interest and costs, as ordered by the Claims Tribunal, 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 first respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv/srk

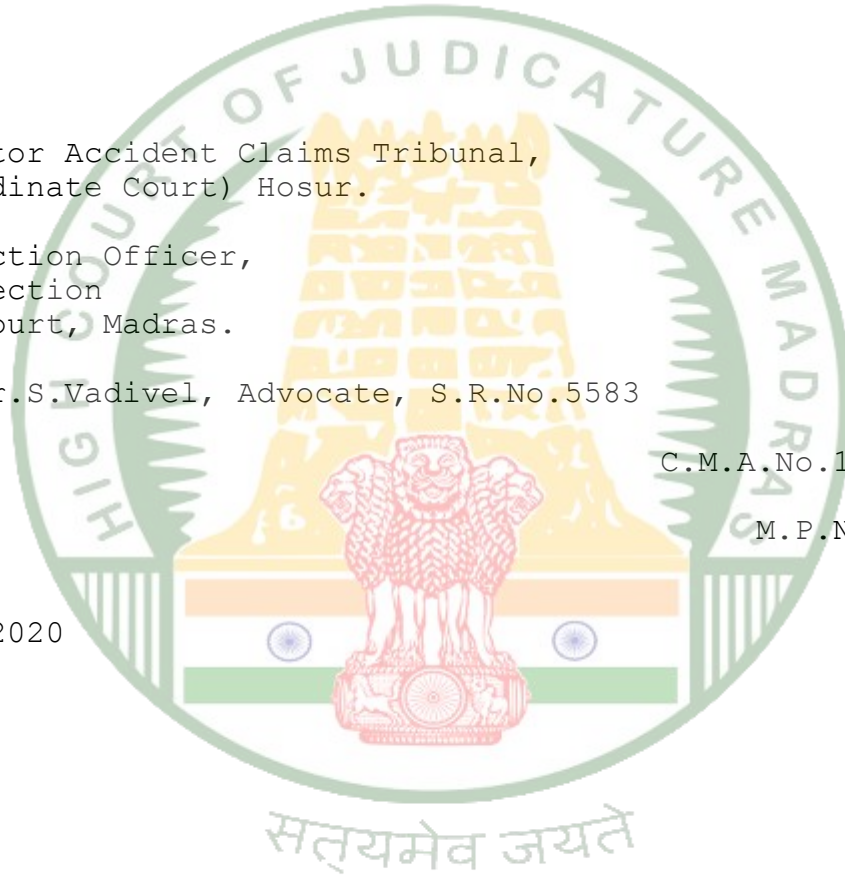
To

1. The Motor Accident Claims Tribunal,
(Subordinate Court) Hosur.
2. The Section Officer,
V.R. Section
High Court, Madras.

+lcc to Mr.S.Vadivel, Advocate, S.R.No.5583

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M.P.No.1 of 2008

SJ(CO)
CS/01/10/2020



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