

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2144 and 2145 of 2008

The Divisional Manger,
United India Insurance Co. Ltd.
Divisional Office,
M.M.Reddy Complex,
No.12005A, Old Bangalore Road,
Hosur 635 109.

... Appellant in both CMAs

Vs

1. Arjunan ... 1st Respondent in CMA No.2144/2008

Yellappa ... 1st Respondent in CMA No.2145/2008

2. Chan Basha ... 2nd Respondent in both CMAs

Common Prayer: Civil Miscellaneous Appeals under Section 173 of the Motor Vehicles Act filed against the judgment and decree dated 22.03.2006 made in MCOP Nos.1838 & 1839 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Krishnagiri.

For Appellant
in both CMAs : Mrs.I.Malar

For 1st Respondent
in both CMAs : Mr.D.Rajendran

COMMON JUDGMENT

These appeals are preferred by the appellant/Insurance Company against the common award of a sum of Rs.2,50,000/- each towards compensation to the claimants, due to the injuries suffered by them, while they were travelling as loadman in the lorry bearing registration No.TDD 2250 belonging to the second respondent and insured with the appellant Insurance Company.

2.The case of the claimants is that while they were travelling in the lorry bearing Registration No.TDD 2250 as loadman, due to the rash and negligent driving by its driver,

the lorry turned turtle and due to the same, they sustained grievous injuries. They filed claim petitions, claiming a sum of Rs.3 lakhs each as compensation. The Tribunal, based on the deposition of witnesses as well as the documents adduced before it, has awarded a sum of Rs.2,50,000/- as compensation to each of the claimants.

3.Branding the said quantum of compensation as disproportionate to the injuries sustained by the claimants, these appeals have been preferred by the appellant / Insurance company.

4.The learned counsel for the appellant/Insurance company has submitted that the Tribunal has erred in awarding compensation to the claimants in the absence of any documentary evidence to show that the accident had occurred due to the negligent driving of the lorry by its driver. She further submitted that the compensation awarded by the Tribunal under different heads are excessive.

5.On the other hand, the learned counsel for the first respondent in these appeals / claimants has submitted that the Tribunal has appreciated the documents and evidence in a proper prospective and has awarded the just compensation and hence interference is uncalled for.

6.A perusal of the common award passed by the Tribunal would establish the following:

- i. P.Ws.1, 2 and 3, viz.the claimants herein and the Doctor, have been examined to speak about the manner of accident.
- ii.Ex.P1, FIR supports the case of the claimants.
- iii.The driver of the lorry has not been examined before the Tribunal to speak about the manner of accident.
- iv.RW1 during the cross examination, has admitted that the policy was in force and the appellant/insurance company is liable to indemnify the owner of the lorry.
- v. P.W.3 Doctor has been examined to speak about the injuries suffered by the claimants.

7.The Tribunal has correctly considered the materials and evidence and came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, which finding this Court is not inclined to interfere.

8.During cross examination, the Doctor has stated that the claimant in C.M.A.No.2144 of 2008 has suffered fractures on the right leg thigh and there was shortening of right leg above knee and there was break on right leg tibia bone. He has also stated that there was shortening of right leg by 1 cm and ultimately assessed disability at 45%.

9. In respect of both the claimants, considering the injuries sustained by them, the Tribunal has awarded a sum of Rs.50,000/- towards injuries which was supported by Ex.P2/ wound certificate. A sum of Rs.50,000/- has been awarded towards pain and suffering for which there is a Doctor's certificate. Sums of Rs.40,000/-, Rs.30,000/- Rs.30,000/- and Rs.15,000/- have been awarded towards permanent disablement, future loss of earning on account of permanent disability, medical expenses and future medical expenses, respectively. For awarding these sums, Exs. P4, P5 and P6 have been adduced before the Tribunal. Further, the Tribunal has awarded sums of Rs.3,000/-, Rs.5,000/-, Rs.2,000/-, Rs.10,000/- and Rs.15,000/- attender charges, damage to clothes, transport expenses, loss of income during treatment period and extra nourishment, respectively. Thus, the Tribunal has awarded a sum of Rs.2,50,000/- in each of the petitions. The quantum arrived at by the Tribunal are based on settled principles of law and weightage of evidence.

10. At this juncture, the learned counsel for the appellant has submitted that the insurance company cannot be saddled with the interest at the rate of 9% per annum and it needs significant reduction. The said submission has some force. It is not in dispute that the accident was of the year 2002, the petitions were disposed of during the year 2006, the appeals were filed in the year 2008 and the appeals are being disposed of only now, i.e., during 2019. Hence, the interest alone is modified from 9% to 7.5% per annum, which is payable from the date of the petition till the date of deposit.

11. In the result, the Civil Miscellaneous appeals filed by the Insurance company are partly allowed by confirming the quantum of compensation and by reducing the interest rate from 9% to 7.5% per annum from the date of petition to till the date of deposit. No costs. Consequently, connected Miscellaneous Petitions are closed.

12. The appellant Insurance company, in both the appeals, is directed to deposit the award amounts with interest at the rate of 7.5% per annum from the date of petition, after deducting the amounts, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vum/srk

To

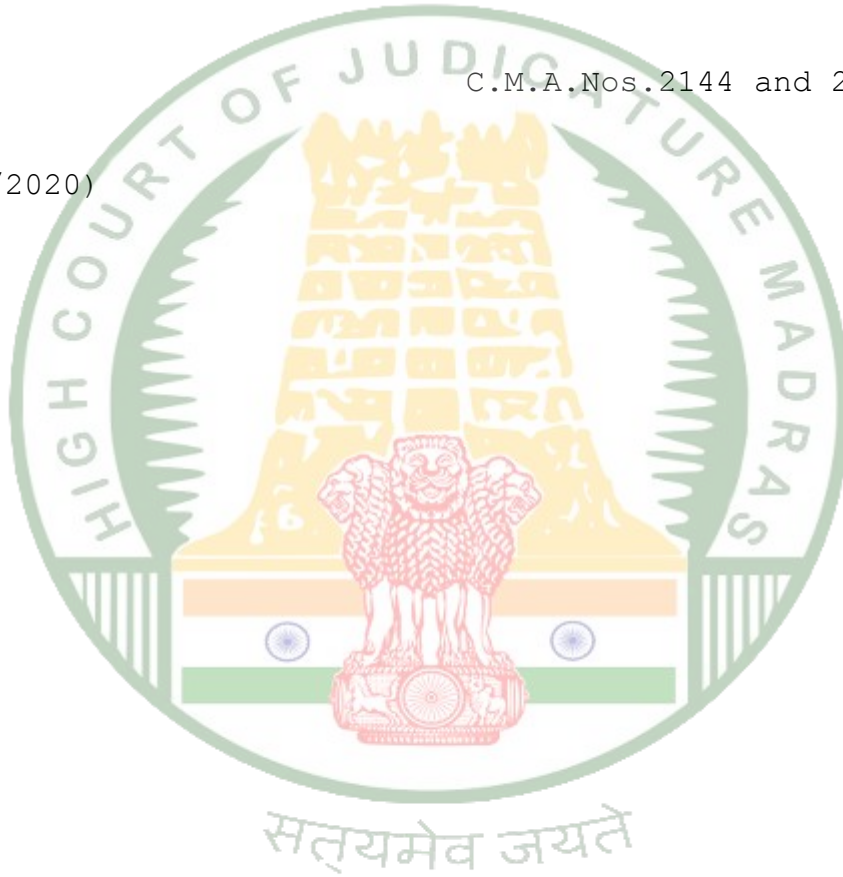
1.The Motor Accidents Claims Tribunal
Subordinate Court,
Krishnagiri.

Copy To : The Section Officer,
VR Section, Madras High Court.

+lcc to Mrs.I.Malar, Advocate SR.No.69864

C.M.A.Nos.2144 and 2145 of 2008

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