

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.1639 OF 2009

AND

M.P.NO.1 OF 2009

M/S ICICI Lombard General
Insurance Co., Ltd.,
Branch Officer,
1st Floor, Vigneshvar Cresta,
1095, Avinashi road,
Pappanaichenpalayam,
Coimbatore.

.. Appellant/3rd Respondent

Vs

1.S.Ismail @ Mohammed Ismail .. 1st Respondent/Petitioner

2.B.Gunasekaran .. 2nd Respondent/1st Respondent

3.S.Sivakumar .. 3rd Respondent/2nd Respondent

(Respondents 2 and 3 were Ex-parte in the Lower Court)

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.01.2009 made in MCOP No.1015 of 2007 on the file of the Motor Accident Claims Tribunal (II Additional Sub Court) at Coimbatore.

For Appellant : M/s.R.Sreevidhya

For R1 : Mr.P.M.Duraiswamy

For R2 & R3 : Ex-parte

J U D G M E N T

This appeal has been preferred by the Insurance company as against the award passed by the claims Tribunal in M.C.O.P.No.1015 of 2007 dated 20.01.2009.

2. The brief facts of the case are as follows:-

On 22.06.2007 while the claimant / the 1st respondent herein along with pillion rider, was riding his motorcycle bearing Registration No. TN-37-AT-9403, at Kulathupalayam Pirivu, B.K.Pudur, Palakad main road, Kuniyamuthur, the Minidor vehicle bearing Registration No.TN-37-AC-8284, came in a rash and negligent manner and hit the motorcycle. Due to the said impact, the claimant as well as the pillion rider of the motorcycle fell down from the motorcycle. On account of the accident, the claimant sustained grievous injuries, fractures and multiple injuries all over the body. He took treatment at four hospitals. Contending that the accident had occurred only on account of the rash and negligent driving of the driver of the Minidor vehicle, a claim petition was filed before the claims Tribunal claiming a sum of Rs.5,00,000/- as compensation, by the first respondent. The Tribunal based on the materials available on record, has awarded a sum of Rs. 2,40,040/- with interest at the rate of 7.5% per annum from the date of petition as total compensation payable to the claimant by the insurer/appellant Insurance Company. As against the same, the appellant/ Insurance Company has preferred this Appeal.

3.The learned counsel for the appellant, at the outset, submitted that the Tribunal has erred in holding that only the appellant is liable to compensate the claimant without appreciating the Motor vehicle inspector's report and the terms of the policy to identify the nature and the usage of the vehicle, when the fact remained that the first respondent was also negligent in riding the motorcycle. She further submitted that the award passed by the Tribunal is liable to be scaled down.

4.Per contra, the learned counsel for the first respondent/ claimant has submitted that the Tribunal has passed the award based on the evidence and documents adduced by both sides; the driver of the Minidor vehicle has accepted the guilt and has paid the fine amount before the Criminal Court; and hence, interference with regard to the finding of the Tribunal on negligence, is not necessary. He also prayed to confirm the award as the same is just and reasonable, based on the evidence and materials adduced by the parties.

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

6.A perusal of the award would disclose the fact that the contents of the Ex.P1-FIR corroborate with the evidence of PW1/injured. The Tribunal has rightly taken note of Ex.P6-Rough Sketch, Ex.P7-Criminal Court Judgment and Ex.P5-Motor Vehicle

Inspector's Report and has come to the conclusion that the accident had occurred on account of the rash and negligent driving of the driver of Minidor vehicle, which factual finding this Court is not inclined to interfere.

7. With regard to the quantum of compensation, the Tribunal has quantified the compensation at Rs.2,40,040/- under 10 different heads which are pecuniary and non-pecuniary damages. To arrive at such a quantum, the evidence of PW2/Doctor, who assessed the disability of the claimant has been examined and through him Exhibit P13-disability certificate has been marked. The Doctor has assessed the following injuries on the claimant.

- (1) Fractured on left leg for which operation was done.
- (2) Left color bone fractured.
- (3) Left hand bone fractured.
- (4) Left knee cell dislocated.

8. Based on the above, the Doctor has assessed the disability. The Tribunal has taken note of the same and has awarded a sum of Rs.75,000/- towards grievous injuries, Rs.10,000/- towards extra nourishment, Rs.60,000/- towards permanent disablement. Further, the Tribunal has awarded sums of Rs.20,000/-, Rs.10,000/-, Rs.500/-, Rs.9000/- and Rs.2000/- towards pain and suffering, mental shock and agony, damage to clothes, transport expenses and simple injuries, respectively. The Tribunal has also awarded a sum of Rs.41,240/- towards medical expenses relying upon Ex.P8-Medical Bills and Rs.12,300/- towards loss of income during the treatment period. This Court is of the opinion that the quantum arrived at by the Tribunal is nothing but just and hence, the same is hereby confirmed.

9. In the result, this appeal filed by the Insurance Company stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance company shall deposit the entire compensation amount, along with interest and costs, as awarded 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.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk/vsn

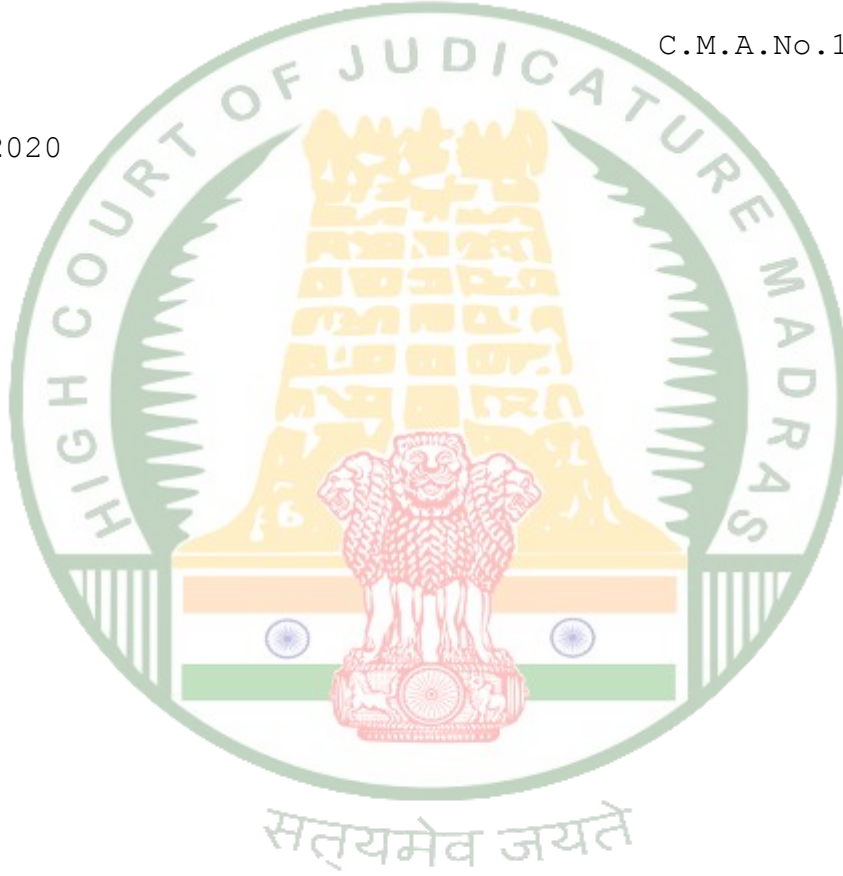
To

1. Motor Accident Claims Tribunal
(II Additional Sub Court)
Coimbatore.
2. The Section Officer
V.R.Section, Madras High Court,
Chennai 104.

+lcc to Mr.P.M.Duraiswamy, Advocate, S.R.No.64891
+lcc to M/s.R.Sreevidhya, Advocate, S.R.No.65462

C.M.A.No.1639 of 2009

MR(CO)
CS/05/10/2020



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