

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2236 and 2326 of 2009
and
M.P.Nos.1 and 1 of 2009

The Manager,
National Insurance Company Ltd.,
3rd Party Claims Cell,
No.751 Anna Salai,
Chennai 600 002. ...Appellant in both C.M.A's

Vs

1.Minor Ram represented
by his father Mangaiah

2. Thanigaivelu ...Respondents in C.M.A.No.2236 of 2009

1. S. Santhi

2. Thanigaivelu ...Respondents in C.M.A.No.2326 of 2009

Common Prayer: These Appeals have been filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 05.11.2008 made in MACTOP Nos.591 of 2005 and 551 of 2005, respectively, on the file of the Motor Accident claims Tribunal, Ponneri.

For Appellant : S. Vadivel

COMMON JUDGMENT

These appeals have been preferred against the Judgment and decree dated 05.11.2008 made in MACT.OP.Nos.591 of 2005 and 551 of 2005, respectively on the file of the Motor Accident claims Tribunal, Ponneri.

2.The case in brief, is as follows:

On 28.03.2005 at 9.00 a.m when the first respondent(s) in these appeals were travelling in the Mahindra Van bearing Registration No.TN-50A-5695 from Red Hills to Sozhavaram on the Thiruvallur High Road near Ambedkar Nagar, the driver of the van

drove the same in a rash and negligent manner, as a result of which it got capsized. Due to the said impact, the first respondent(s) in these appeals, sustained injuries and they were admitted in the Government Stanley Hospital for treatment. They filed claim petitions before the Tribunal claiming a sum of Rs.1,00,000/- each. On consideration of the materials and evidence available on record, the Tribunal has passed a common order, dated 05.11.2008 and awarded Rs.78,500/- to the first respondent in C.M.A.No.2236 of 2009 and has awarded Rs.44,500/- to the first respondent in C.M.A.No.2326 of 2009 with interest at the rate of 7.5% p.a., from the respective dates of petitions.

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

4.The learned counsel for the appellant/Insurance Company has submitted that the owner of the alleged vehicle involved in the accident has not reported anything about the accident and has not produced any insurance particulars and the particulars as to whether the driver was in possession of the driving license or not, at the time of the accident. Hence, in the absence of any relevant particulars the appellant is not able to admit the claim of the claimants. He further contended that the owner of the vehicle has not appeared before the Tribunal to substantiate the claim of the claimants, and remained ex-parte. In any event 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.Though these appeals were admitted way back in the year 2009, the appellant has not taken proper steps to serve notice on the other side. However, due to paucity of time, these appeals are taken up for final disposal, on merits.

7.Before the Tribunal, the father of the petitioner in M.C.O.P. No.591 of 2005 was examined as P.W.1 who has deposed that the negligent driving of the driver of the van was the cause for the accident. The petitioner in M.C.O.P.No.551 of 2005 was examined as P.W.2 who has also deposed that the rash and negligent driving of the driver of the van was the cause for the accident. Even though the owner of the vehicle remained ex-parte before the Tribunal, but considering the facts and circumstances of the case, the Tribunal accepted the contentions raised by the claimants and fixed the liability on the Insurer of the vehicle, as per law. The Tribunal further observed that the Insurance Company / appellant herein has neither let in any evidence nor marked any documents before the Tribunal. Nothing prevented

them from marking any documents or producing any evidence before the Tribunal. Taking note of the same, the Tribunal has fastened the liability on the side of the appellant herein. The findings rendered by the Tribunal are based on the materials and evidence produced before it, which is proper and reasonable.

8. With regard to the compensation awarded by the Tribunal, in M.C.O.P.No.591 of 2005 it has considered Ex.P.4/medical bills and awarded Rs.1,000/- towards medical bills, besides awarding Rs.1,500/- towards Extra Nourishment. Taking note of Ex.P.9/Disability certificate Rs.67,500/- and Rs.5,000/- were awarded towards permanent disability and pain and suffering respectively and Rs.1,000/- was awarded towards Transportation Expenses and Rs.1,000/- was awarded towards damage to clothes. In the column meant for occupation of the injured in the claim petition, the injured has stated that he was earning Rs.2,000/- per month, by doing coolie work and the Tribunal has taken note of the same and has awarded Rs.1,500/- towards loss of earning during the treatment period and the total compensation was calculated at Rs.78,500/-.

9. With regard to the compensation awarded by the Tribunal, in C.M.A.No.551 of 2009 it has considered Ex.P.11/Disability certificate and awarded Rs.37,500/- towards permanent disability. Considering the nature of the injuries sustained by the claimant, the Tribunal has awarded Rs.3,000/- towards pain and suffering. Taking note of other relevant documents the Tribunal has awarded Rs.1,500/- and Rs.1,000/- towards extra nourishment and damage to clothes. In the column meant for occupation of the injured, the injured has stated that he is earning Rs.2,000/- per month, by doing coolie work and the Tribunal has taken note of the same and has taken Rs.1,500/- as monthly income and awarded Rs.1,500/- towards loss of earning during the treatment period. Thus, the total compensation amount was arrived at Rs.44,500/-.

10. The findings rendered on quantum by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence. Hence, this Court is of the view that interference on quantum is uncalled for.

11. In the result, both the Civil Miscellaneous Appeals are dismissed. The appellant Insurance Company is directed to deposit the award amounts with interest and costs, as ordered by the Tribunal, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The first respondent minor in C.M.A.No.2236 of 2009 would have attained majority by now. Hence, on such deposit being made, the claimants in both these appeals are permitted to withdraw the same, on making proper

application before the Tribunal. No costs. Consequently,
connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk/smn

To

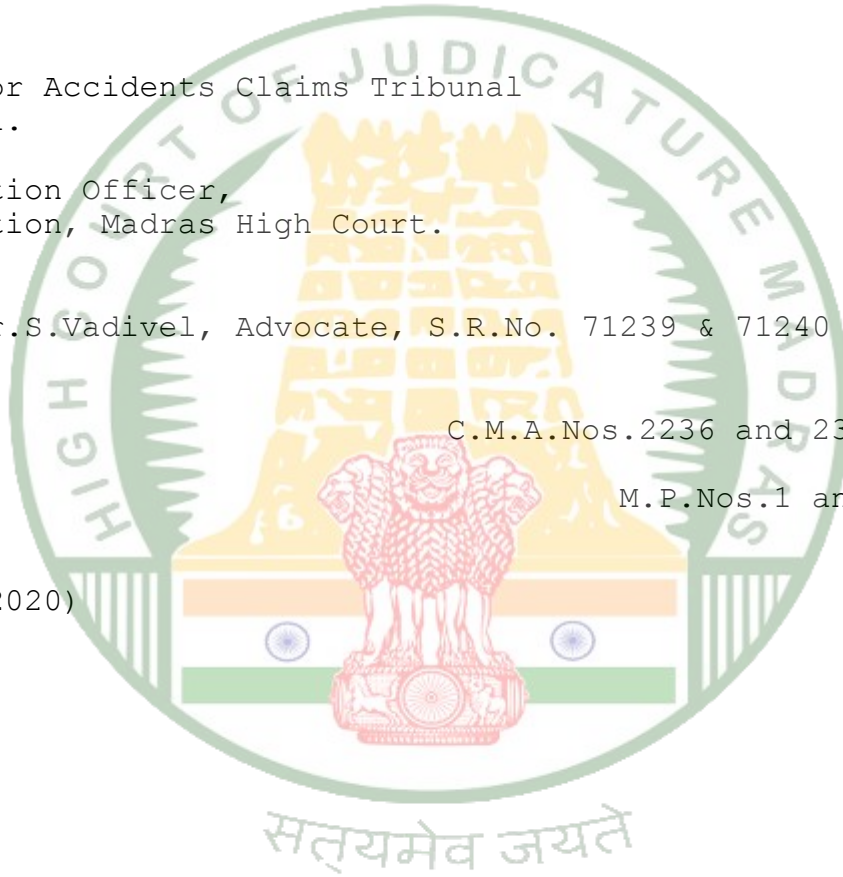
1.The Motor Accidents Claims Tribunal
Ponneri.

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

+2cc to Mr.S.Vadivel, Advocate, S.R.No. 71239 & 71240

C.M.A.Nos.2236 and 2326 of 2009
and
M.P.Nos.1 and 1 of 2009

SSV(CO)
GN(27/08/2020)



WEB COPY