

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :19.03.2019
Pronounced on :25.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2684 of 2010
and
M.P.No.1 of 2010

M/s.Oriental Insurance Company Limited,
Hosur - 635 109 ... Appellant/Respondent II

Vs.

1.V.P.John ...1st Respondent/Petitioner

2.R.K.Idhayavendan ...2nd Respondent/Respondent I

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.08.2007 made in MC.O.P.No.811 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Krishangiri.

For Appellant : Mr.J.Chandran

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Order and Decree dated 28.08.2007 made in MC.O.P.No.811 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Krishangiri.

2. The averments made in the claim petition in brief are as follows:-

(i) On 25.07.2003, the first respondent was proceeding in his TVS XL super moped bearing Registration No.TN 29 R 6041 slowly, cautiously, on the extreme left side of the road, keeping to all the rules of the road in Krishnagiri town to Bangalore Main Road towards his house. At about 08.30 hours, while thus proceeding near Central Bank at Krishnagiri Town, the Hero Honda Splendor Motor Cycle bearing Registration No.TN 29 U 7221 belonging to the second respondent and insured with the

appellant was driven by its rider one K.Rass in a rash, reckless and negligent manner, without following any rules of the road, without sounding horn, at an uncontrollable speed, came in the opposite wrong side i.e., right side of the road, suddenly hit on the 1st respondent and his TVS XL super moped. Due to the impact, the first respondent was thrown off and sustained the severe head injuries.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.1,33,500/- with interest at 7.5% per annum.

4. Heard the learned counsel appearing for the appellant and none appearing on behalf of the respondents.

5. During the Trial, the 1st respondent/claimant was examined himself as P.W.1 and Doctor was examined as P.W.2 and Head constable was examined as P.W.3 and Exhibits P1 to P18 were marked. On behalf of the respondent side, D.W.1 and D.W.2 were examined and Exhibits R1 and R2 were marked before the Tribunal.

6. The learned counsel for the appellant/Insurance Company would submit that the first respondent herein is a claim petitioner and by his own act, he has caused the accident and relied upon Exhibits P1 to P7 wherein, he has pleaded not guilty. However, he has filed a M.C.O.P. under Section 163 A of Motor Vehicle Act and the same was allowed and even according Section 163-A of Motor Vehicle Act, the compensation awarded by the Tribunal is excess.

7. Taking into consideration, the injuries sustained by the claimant and disability having been assessed at 30%, the award of the Tribunal at Rs.45,000/- for disability is just and reasonable.

8. Taking into consideration, the medical expenses awarded by the Tribunal at Rs.70,000/- this Court feels that the same is on the higher side. Hence, this Court awards Rs.15,000/- for 'medical expenses'. The pain and sufferings undergone by the claimant is such that, it is a fit case where Rs.5,000/- should be awarded and the amount of Rs.5,000/- awarded by the Tribunal under the head 'pain and sufferings' is hereby confirmed.

9. The award amount under the heads 'attender charges', 'transportation', 'nutrition' and 'clothes' are not at all warranted. Taking into consideration the facts and circumstances of the case, the same are set aside.

10. Accordingly, the compensation amount awarded by the Tribunal is hereby modified and reduced as follows: (as per under Section 163-A of the Act+schedule thereon)

Heads	Trial Court	High Court
Disability	Rs. 45,000/- [30%]	Rs. 45,000/-
Medical Expenses	Rs. 70,000/-	Rs. 15,000/-
Pain & Sufferings	Rs. 5,000/-	Rs. 5,000/-
Attender charges	Rs. 5,000/-	Nil
Transport expenses	Rs. 5,000/-	Nil
Nutrition	Rs. 2,500/-	Nil
Clothes	Rs. 1,000/-	Nil
Total	Rs. 1,33,500/-	Rs. 65,000/-

11. In the result,

(i) this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.1,33,500/- awarded by the Tribunal is hereby reduced to Rs.65,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

(ii) The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn.

(iv) The appellant/Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.811 of 2003 on the file of the Motor

Accidents Claims Tribunal, Subordinate Judge, Krishnagiri, if the entire award amount had already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

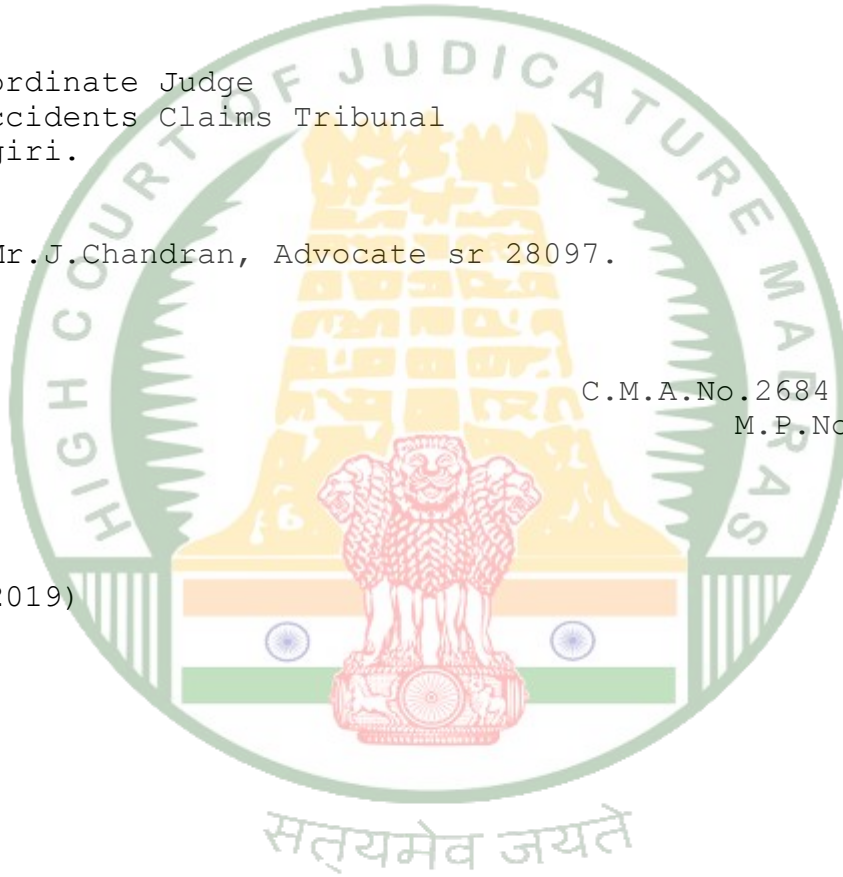
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To
1.The Subordinate Judge
Motor Accidents Claims Tribunal
Krishnagiri.

+1 CC to Mr.J.Chandran, Advocate sr 28097.

C.M.A.No.2684 of 2010 and
M.P.No.1 of 2010

SSD(CO)
SP(28/08/2019)



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