

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1194 of 2015
and M.P.No.1 of 2015

Shriram General Insurance Co.Ltd.
No.66, 2nd Floor, City Centre Complex
Thirumala Pillai Road
T.Nagar, Chennai-600 017.

... Appellant/2nd Respondent

Vs

1.D.Jayakumar

...1st Respondent/Petitioner

2.Kanniappan K.

...2nd Respondent/
1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 25.09.2014 made in MCOP No.3268 of 2013 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.Varadhakamaraj for R1

JUDGMENT

The case in brief, is as follows:

On the fateful day, ie. on 23.05.2013 at about 05.45 hours, the first respondent was riding the bicycle in the Medavakkam Main Road, Chennai. When the first respondent was nearing Adam Agency, Adambakkam, the van bearing Reg.No.TN-22-BY-1753, belonging to the second respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and dashed against the first respondent. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,81,300/- with interest at the rate of 7.5% per annum from the date of

petition.

2.Challenging the same, the appellant-Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the van belonging to the second respondent. He also disputed the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

4.The learned counsel for the first respondent / claimant has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

6.Ex.P1 is the First Information Report registered against the driver of the van, in which it is alleged that the accident had occurred only due to the rash and negligent driving of the driver of the van belonging to the second respondent herein. Further, neither any witness has been examined nor any documentary evidence produced on the side of the Insurance Company before the Tribunal to prove their stand that the accident had not occurred due to the rash and negligent driving of the driver of the van. In the absence of any rebuttal evidence on the side of the Insurance Company, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van belonging to the second respondent herein. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

7.Next comes compensation. The details of the compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (Rs.)
Permanent disability	90,000/-
Transport to hospital	40,000/-
Extra nourishment	50,000/-
Pain and suffering	1,00,000/-
Medical expenses	83,270/-
Attender charges	30,000/-
Damages to clothes	3,000/-
Loss of income	30,000/-
Loss of amenities	30,000/-
Future medical expenses	25,000/-

TOTAL...	4,81,270/-
	=====
	(rounded off to Rs.4,81,300/-).

8.The Tribunal has awarded a sum of Rs.90,000/- towards 45% permanent disability at the rate of Rs.2,000/- per percentage of disability. It is seen that the first respondent has sustained Grade-I compound fracture of both bones of right leg. P.W.2-Doctor examined the first respondent and assessed the disability at 45%. Considering the injuries suffered by the first respondent, it would be appropriate to fix a sum of Rs.3,000/- per percentage of disability and if that is done, the amount towards permanent disability works out to Rs.1,35,000/-. The amount awarded towards medical expenses is confirmed, since it is an actual expenditure. Further, this Court is of the view that the amounts awarded by the Tribunal towards transport to hospital, extra nourishment, pain and suffering, attender charges and loss of amenities are on the higher side and it would be appropriate to reduce the same to Rs.25,000/-, Rs.20,000/-, Rs.50,000/-, Rs.25,000/- and Rs.25,000/- respectively. The Tribunal has awarded a sum of Rs.25,000/- towards future medical expenses. Considering the amounts awarded towards other heads, the amount awarded by the Tribunal towards future medical expenses, is deleted. The amounts awarded by the Tribunal towards damages to clothes at Rs.3,000/- and towards loss of income at Rs.30,000/- are reasonable and hence the same are confirmed.

9.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Permanent disability	1,35,000/-
Transport to hospital	25,000/-
Extra nourishment	20,000/-
Pain and suffering	50,000/-
Medical expenses	83,270/-
Attender charges	25,000/-
Damages to clothes	3,000/-
Loss of income	30,000/-
Loss of amenities	25,000/-
TOTAL...	3,96,270/-

(rounded off to Rs.3,96,300/-)

Thus, the first respondent / claimant is entitled to the modified compensation of Rs.3,96,300/- with interest at the rate of 7.5% per annum from the date of petition.

10.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

11.The appellant Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant shall withdraw the same, on making proper application before the Tribunal.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KM
To

1.The IV Judge,
IV Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

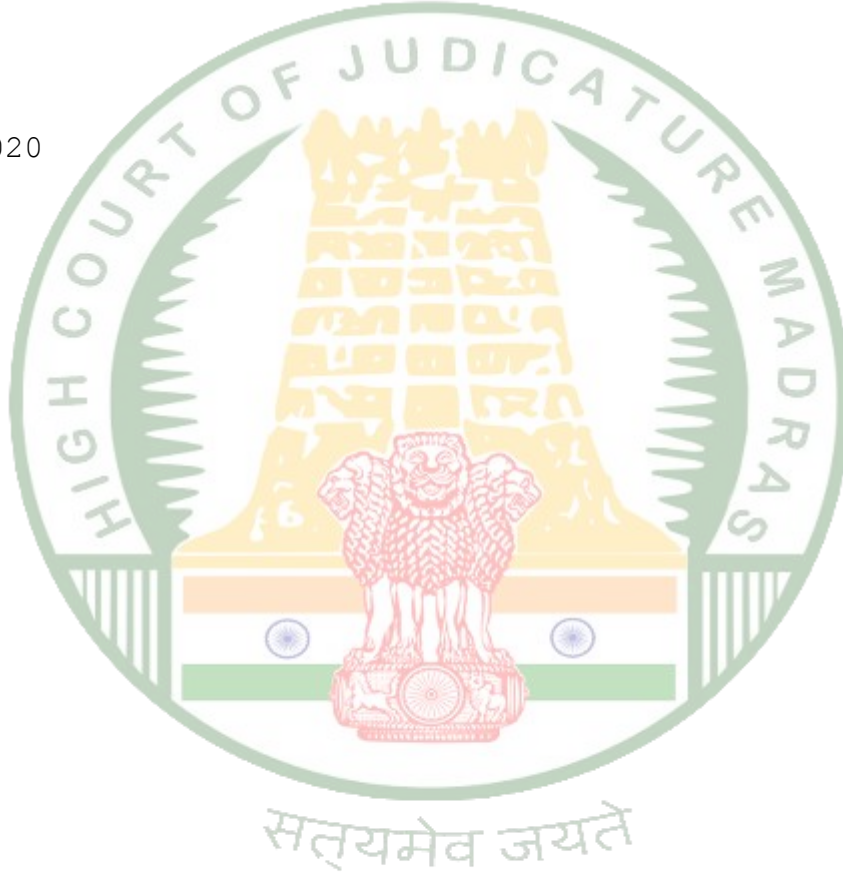
Copy to

The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.S.Dhakshnamoorthy Advocate sr86122
+1 cc to Mr.K.Varadha Kamaraj Advocate sr86016

C.M.A.No.1194 of 2015
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