

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2019

PRONOUNCED ON : 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1879 & 904 of 2012

and

M.P.No.1 of 2012 in CMA.1879 of 2012

The Divisional Manager  
M/s. National Insurance Company Limited,  
Officer's Line,  
Vellore - District. ... Appellant  
in C.M.A.No.1879 of 2012

D.Magi @ Margarate ... Appellant  
in C.M.A.No.904 of 2012

.. Vs ..

1.Yesudoss  
2.C.K.Perumal ... Respondents  
in C.M.A.No.1879 of 2012

1.C.K.Perumal  
2.The Divisional Manager,  
National Insurance Company Limited,  
Officer's Line, Vellore - 632 001. ... Respondents  
in C.M.A.No.904 of 2012

PRAYER in C.M.A.No.1879 of 2012: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.113 of 2007, dated 27.12.2011, on the file of the learned Motor Accident Claims Tribunal (Additional District and Sessions Judge) Fast Track Court, at Vellore.

PRAYER in C.M.A.No.904 of 2012: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the Judgment and Decree dated 10.11.2011 and made in M.C.O.P.No.111 of 2005, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

in C.M.A.No.1879 of 2012

For Appellant : Mr.J.Chandran  
For R1 : Mr.C.Prabakaran  
For R2 : Mr.P.Jagadeesan

in C.M.A.No.904 of 2012

For Appellant : Mr.C.Prabakaran  
for M/s.V.Jagannathan  
For R1 : Mr.P.Jagadeesan  
For R2 : Mr.J.Chandran

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#### COMMON JUDGMENT

The claim petitioner in M.C.O.P.No.111 of 2005 is the appellant in C.M.A.No.904 of 2012, challenging the order of dismissal passed in M.C.O.P.No.111 of 2005, while, in C.M.A.No.1879 of 2012, the Insurance Company is the appellant herein, challenging the award passed in C.M.A.No.113 of 2007 on the ground of liability and quantum of compensation.

2. In the above two civil miscellaneous appeals, M.C.O.P.Nos.111 of 2005 and M.C.O.P.No.113 of 2007 have been filed, which arose out of the very same accident. The rider of the motor cycle has filed M.C.O.P.No.113 of 2007 as against which, C.M.A.No.1879 of 2012 has been filed by the Insurance Company, while the pillion rider, who was injured in the very same accident has preferred M.C.O.P.No.111 of 2005, as against which, C.M.A.No.904 of 2012 has been filed by the claimant itself.

3. The claim petitioner namely, D.Magi @ Margarate, who was the appellant in C.M.A.No.904 of 2012, has filed the claim petition, alleging that on 08.03.2005 at 8.30 A.M., while she was going as a pillion rider in a TVS-50 bearing Registration M.P.No.44-A0612 along with her relative Yesudoss, who was riding the two wheeler and when the two wheeler came near Vettuvanam at Vellore to Ambur main road, a Tipper Lorry bearing Registration No.TN-27-T-1636 came in a rash and negligent manner and hit the two wheeler and the claim petitioner sustained grievous injuries. The claim petitioner states that she was taken to Vellore Government Medical College Hospital and a case in Cr.No.134 of 2005 has been registered by the Pallikonda police station.

4. The first respondent in CMA No.904 of 2012 namely, C.K.Perumal, who is the owner of the Tipper Lorry, has filed counter statement denying the manner of the accident and also stated that the vehicle number is TN-27-T-1636. Before the Tribunal, the second respondent in CMA No.904 of 2012/Insurance Company has filed counter statement, specifically alleging that the vehicle number mentioned in FIR viz., TN-27-T-1631 was not insured with them and it is seen that a separate trial was conducted before the Trial Court.

5. Based upon the oral and documentary evidence, the Tribunal has held that the accident had taken place and due to which, the claimant has sustained injury, however, the Tribunal has held that there is a discrepancy in the Registration number of the Lorry and hence, dismissed the claim petition in M.C.O.P.No.111 of 2005. Hence, C.M.A.No. 904 of 2012 is preferred by the claimant in M.C.O.P.No.111 of 2005.

6. The first respondent in C.M.A.No.1879 of 2012 viz., Yesudoss has filed M.C.O.P.No.113 of 2007, alleging that on 08.03.2005 at about 08.30 hours while the petitioner/Yesudoss was riding his TVS 50 Two Wheeler bearing registration No.MP 44 A 0612 carrying his relative Magi @ Margarate on Pillion, on Vellore to Ambur Main Road near Vettuvanam junction road, a Tipper Lorry bearing registration No. TN-27-T-1636 owned by the first respondent [before the Tribunal/owner of the vehicle] came in a rash and negligent manner and dashed against petitioner. The petitioner sustained grievous injuries all over the body and also sustained fracture in his left leg. Immediately, he was taken to C.M.C. Hospital for treatment. Pallikonda Police has registered a case in Cr.No.134 of 2005 for the offences under Sections 279 and 338 of IPC.

7. The first respondent [before the Tribunal], who is the owner of the vehicle, has stated that the vehicle number was wrongly given as TN-27-T-1631 and that he is having a Tipper Lorry with Registration No.TN-27-T-1636. The Insurance Company has filed counter statement alleging that the accident had taken place only due to the rash and negligent driving of the rider of the two wheeler. It appears that the second respondent in M.C.O.P.No.113 of 2007/Insurance Company has filed additional counter statement stating that the amendment petition filed for amending the number of the Tipper Lorry as TN-27-T-1636 is erroneous and it is in collusion with the Police to get compensation.

8. In support of the case in MCOP.No.113 of 2007 [C.M.A.No.1879 of 2012], on behalf of the claimant, the claimant examined himself as P.W.1 and Dr.C.Shanmugam was examined as PW2 and documents Exs.P1 to P11 were marked. On behalf of the respondents [before the Tribunal], One Mr. Gnasekaran was examined as RW1 and Mr.Gopal was examined as RW2 and documents Exs:R1-certified copy of the order passed in M.C.O.P.No.111 of 2005 and R2-Certified copy of Decree passed in M.C.O.P.No.111 of 2005, which is the subject matter of C.M.A.No.904 of 2012, were marked. While in M.C.O.P.No.111 of 2005 [C.M.A.No.904 of 2012], before the Tribunal, on behalf of the claimant, the claimant examined herself as P.W.1 and six documents were marked as Exs.P.1 to P.6 and on the side of the respondents before the Tribunal, no witness was examined

and no document was marked.

9. For the sake of convenience, let us now deal with C.M.A.No.1879 of 2012. To substantiate the plea that the vehicle involved in the accident is TN-27-T-1636, the claim petitioner namely, Yesudoss was examined as PW1 and marked Ex.P1-FIR. The petitioner Yesudoss, who was serving as a Head Constable in Central Reserve Protection Force, when came to his native place, met with an accident and sustained grievous injuries on 08.03.2005 at about 08.30 hours when he was riding his TVS 50 motorcycle bearing Registration No. MP-44-A-0612 along with his relative namely, Magi @ Margarate as pillion rider, on Vellore to Ambur main road. When he was nearing Vettuvanam junction road, a Tipper Lorry bearing registration No. TN-27-T-1636 hit the TVS 50 motorcycle in which the petitioner sustained grievous injuries. He took treatment at C.M.C. Hospital, Vellore. Originally, this petition was filed stating that the Tipper Lorry bearing registration No. TB-27-T-1631 hit the two wheeler. Therefore, as per the order passed by High Court in CRP.No. 4152 of 2010 and MP.No.1 of 2010, dated 24.02.2011, the registration number of the Lorry is amended in the petition as TN-27-T-1636. Since, the vehicle number was amended as per the Order of the High Court, the defect found in the claim petition is cured.

10. On the point of rash and negligence, the trial Court has believed the evidence of PW1 and also taken note of the order passed by this Court in C.R.P.No.4152 of 2010, dated 24.02.2011, wherein registration number of the Lorry was amended and it has been allowed. The observation made therein is extracted hereafter:

"According to the petitioner the said mistake has happened because of the wrong noting in the FIR. That apart, it is stated that while recording the statement from one Sethya by the head constable, it has been wrongly mentioned that the vehicle involved in the accident as TN-27-T-1631. The said submission made by the petitioner in his affidavit appears to be more probable. It is stated by the petitioner in the claim application that the vehicle involved is a lorry and the owner of the lorry is C.K.Perumal. Admittedly, the vehicle No. TN-27-T-1631 relates to a two-wheeler. That apart, the owner of the vehicle has also been stated correctly. In such circumstances, I am of the considered view that while giving a complaint by a third party, the vehicle number would have been wrongly noted. That cannot be put against the petitioner. Especially, in respect of accident case, such error is possible."

11. The Tribunal, taking into consideration the fact that at the time of the incident, the registration number of the

vehicle was wrongly mentioned as '1631' instead of '1636' and also believed the evidence of PW1, Head Constable in the Central Reserve Protection Force. The Tribunal has also observed that both the parties have admitted that the vehicle bearing Registration No. TN-27-T-1631, was inadvertently mentioned in the document and it relates to the two wheeler and the owner of the Tipper Lorry has also correctly stated about the Registration number of the Lorry.

12. In this view of the matter, when a complaint was given by a third party, an omission or mistake would have occurred inadvertently with regard to the last digit number of the Lorry's registration, which need not be over-emphasized for the simple reason that immediately after the accident, two Head Constables of the Central Reserve Protection Force had been taken to Government Hospital and due to tension which followed after the accident, wrong registration number might have given by the third party as observed by this Court in CRP, arising out of the other claim petitions and subsequently corrected.

13. Hence, the reasoning given by the trial Court stating that the Tipper Lorry bearing Registration No. TN-27-T-1636, owned by the first respondent, which was duly insured with the second respondent/Insurance Company under Ex.P11, is involved in the accident is perfectly sustainable. Accordingly, the finding of the Tribunal that the accident has taken place due to the rash and negligent driving on the part of the driver of the Tipper Lorry owned by the first respondent insured with second respondent/Insurance Company is well merited and well considered, which does not warrant any interference in this appeal.

14. On the point of quantum, after going through the medical records and Ex.P3-discharge summary, it is seen that the claimant has spent a sum of Rs.59,573/- as medical bill under Ex.P4. Ex.P3 is the discharge summary issued from C.M.C. Hospital, Vellore. The petitioner has filed Ex.P4 Medical Bills for Rs.59,573/-. PW2 Dr.C.Shanmugam, who had clinically examined the petitioner, issued Ex.P9, Disability Certificate after perusing Ex.P2 wound certificate, Ex.P3 discharge summary and Ex.P10 X-ray. PW2 assessed that the petitioner/injured suffered 75% of disability. It is further came to understand that the petitioner lost speaking capacity and consciousness to a considerable extent and since he is unable to concentrate in his normal work, he had happened to resign his job and retired voluntarily. The petitioner had filed Ex.P5 Office order issued by the Commandant - 126 BN, CRPF granting permission to retire from the service voluntarily. Ex.P6 is the Pensioner's Identity Card of the petitioner.

15. Taking into consideration the fact that the injured has worked as Head Constable in CRPF and earned Rs.8,000/- per month and due to the injuries he sustained, he voluntarily retired from his service and accordingly, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimant is entitled for increase of 30% of monthly income i.e., Rs.2400/- with regard to future prospects. Further, taking into consideration the nature of disability suffered by the petitioner and its consequential difficulties and treatment underwent by him, as could be seen from Ex.P3-discharge summary and also Ex.P9-disability certificate issued by PW2-Dr.C.Shanmugam, the disability is fixed as 65%. Following the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], correct multiplier to be adopted is 13. Accordingly, the loss of income suffered by the injured claimant/Yesudoss is re-assessed as follows:-

Rs.8,000 + 2400 (30% of 8000) x 12 x 65% x 13 = Rs.10,54,560/-.

The Tribunal has awarded a sum of Rs.59,000/- towards medical expenses and the same is confirmed. Further, this Court awards a sum of Rs.6,000/- towards pain and suffering; a sum of Rs.3,000/- towards loss of amenities; a sum of Rs.2,000/- towards attendant charges; a sum of Rs.2,000/- towards extra nourishment and a sum of Rs.1,000/- towards transportation. Accordingly, the claimant viz., M.Yesudoss is entitled for a sum of Rs.11,27,560/- as total compensation.

| Description            | Amount awarded by Tribunal (Rs.) | Amount awarded by this Court (in Rs.) |
|------------------------|----------------------------------|---------------------------------------|
| Loss of Income         | 9,36,000.00                      | 10,54,560.00                          |
| Medical expenses       | 59,000.00                        | 59,000.00                             |
| Pain and suffering     | -                                | 6,000.00                              |
| Loss of amenities      | -                                | 3,000.00                              |
| Attendant charges      | -                                | 2,000.00                              |
| Extra nourishment      | -                                | 2,000.00                              |
| Transportation charges | -                                | 1,000.00                              |
| Total                  | 9,95,000.00                      | 11,27,560.00                          |

16. In the decision of this Court reported in 2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for enhancing the compensation amount awarded by the Tribunal, by

re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted hereunder:-

"9.Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

17. Accordingly, CMA 1879 of 2012 filed by the Insurance Company, is dismissed in so far as the challenge made against the Award is concerned. In the upshot, CMA.1879/2012 is dismissed with the above modification. Accordingly, enhancement of compensation is ordered in respect of the first respondent in CMA No.1879 of 2012/claimant in M.C.O.P.No.111 of 2007.

18. In C.M.A.No.904 of 2012, for the reasons recorded in the preceding paragraphs, in respect of the claim petition of the pillion rider, in which, the driver who drove the vehicle was the claim petitioner in MCOP.No.113/2007 is concerned, the involvement of the vehicle has been held to be proved in the manner known to law and accordingly, this Court has no hesitation to hold that the vehicle involved in the accident is namely, Tipper Lorry bearing Registration No.TN-27-T-1636 only and the same has been upheld by this Court in CRP.No.4152 of 2010 dated 24.02.2011.

19. Taking into consideration, the nature of injuries sustained by the appellant/claimant as reflected in Ex.P3/scan report to the effect, this Court is inclined to award a consolidate amount of Rs.50,000/- to the claimant.

In the result,

(i) CMA.No.904 of 2012 filed by the claimant namely, D.Magi @ Margarate is partly allowed and order passed in MCOP.No.113 of 2007 is set aside.

(ii) CMA.No.1879 of 2012 filed by the Insurance Company, is dismissed, whereas the compensation awarded to the injured/claimant is enhanced to Rs.11,27,560/- from Rs.9,95,000/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum, in both cases, from the date of the petition till the date of deposit.

(iv) The Insurance Company is directed to deposit the award amount as ordered by this court in both the CMAs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(v) On such deposit, the claimants in both the CMAs are permitted to withdraw the amount awarded by this Court with proportionate interest, less the amount already withdrawn, if any.

(vi) The claimants shall pay necessary Court fee, if any, on the enhanced compensation.

(vii) No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,  
Additional District and Sessions Judge,  
Fast Track Court,  
Vellore.

2.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate,  
Vellore.

3.The Section Officer,  
V.R. Section, High Court,  
Madras.

+2cc to M/s.C.Prabakaran, Advocate SR.63732,63733

C.M.A.Nos.1879 & 904 of 2012 and  
M.P.No.1 of 2012 (CMA.1879 of 2012)

CP (CO)  
CB(28/02/2020)