

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2494 of 2011

K.Ashokan

.. Appellant/Claimant

Vs.

1.T.Manickam

2. M/s. United India Insurance Company Ltd.,
No.6, Ganga Griha, 2nd Floor,
Nungambakkam High Road,
Chennai - 600 034.

(1st respondent set-exparte
before Tribunal)

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.12.2010 made in M.C.O.P.No.330 of 2006 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Salem.

For Appellant : Mr.P.Jagadeesan

For R2 : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 03.12.2010 made in M.C.O.P.No.330 of 2006 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Salem, on the ground that there is two days delay in filing the First Information Report.

2. The appellant / claimant has preferred the M.C.O.P alleging that on 25.01.2004 at about 4.00PM, when the petitioner was travelling as a pillion rider in the motor cycle in Harur road near Sellampatti Eari, the lorry bearing Registration No.T.N.L.5475 came from the opposite direction with great speed in a rash and negligent manner, and hit against the motor cycle. As a result of which the petitioner sustained multiple injuries all over the body. Immediately the petitioner was taken to Government Hospital, Harur and then shifted to Private Nursing

Home, Nallampatti.

3. Before the Tribunal, on the side of the claimant, the claimant was examined as P.W.1 and Doctor was examined as P.W.2 and Exhibits P1 to P8 were marked. On behalf of the respondents, no oral and documentary evidences were marked.

4. The first respondent, who is the owner of the lorry was set-exparte, before the Tribunal. On consideration of oral and documentary evidence, the tribunal has fairly opined that the FIR had been registered with a delay of two days, which was not properly explained. Accordingly, the claim petition is dismissed.

5. From the evidence of the injured PW1 and Ex.P2-wound certificate issued by the Doctor of Government Hospital, Harur, the accident is admitted. Since, the injured was in hospital he was not in a position to give the complaint within time. The relevant portion of the disability certificate of the claimant given by the Doctor is extracted below:-

"Left Log: Multiple scans on left leg X-Ray left leg shows # Tibia and fibula Fixed c Ender's nail. Nail and # left knee pom last 20' knee limited. Not able to squat on the floor. Difficult to climb steps not able to walk or run. Difficulty to ride bicycle difficulty to do power loom work. Nails has to be removed."

Hence, the above reason given by the Tribunal that there is a delay of two days in filing FIR is not fair and proper and the same is unacceptable for the reason that the claim petitioner was under the treatment in the Government Hospital, for some days, after the accident. Hence the finding of the Tribunal is set aside.

6. Considering the oral evidence given by the claimant one Ashokan coupled with the Ex.P1- F.I.R and in the absence of any contra evidence, this Court is of the considered view that while the PW1 is a pillion rider in the motor cycle, the lorry came from the opposite direction with great speed and in a rash and negligent manner, this Court finds that the accident had taken place due to rash and negligent driving of the driver of the lorry. Therefore, the 1st respondent who is the owner of the lorry and the second respondent who is the insurer of the said vehicle is jointly and severally liable to pay compensation.

7. On the point of the quantum, both the parties are heard.

8. It is seen from the evidence of PW2 - Dr.S.Rajamanickam based upon Ex.P2 - Wound certificate and also Ex.P8 - X-ray and Ex.P7-Disability certificate, the Doctor has fixed the disability at 30%, this court also fixes the disability at 30%. Considering the nature of the injury and also the date of the accident i.e., on 25.01.2004, a sum of Rs.1000/- is fixed per percentage of disability, this Court fixed the percentage of disability at 30% and award a sum of Rs.30,000/- for disability and also taking note of Ex.P4- medical bills issued for a sum of Rs.15,528/-, the said amount, i.e, Rs.15,528/- is awarded towards Medical Expenses. Further, a sum of Rs.15,000/- is awarded under the head 'pain and suffering', the amount towards Transportation is fixed at Rs.10,000/-, Loss of amenities is fixed at Rs.10,000/-, Attendant charges is fixed at Rs.10,000/-. Thus, the compensation awarded by this Court is as follows:-

Heads under which the amount is awarded	Amount awarded by this Court
Disability	Rs.30,000/-
Medical Bill	Rs.15,528/-
Pain and Suffering	Rs.15,000/-
Transportation	Rs.10,000/-
Loss of amenities	Rs.10,000/-
Attendant charges	Rs.10,000/-
Total	Rs.90,528/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by this Court is Rs.90,528/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/ Insurance Company is directed to deposit the 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. On such deposit, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any already withdrawn. No costs.

-Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Motor Accidents Claims Tribunal,
II Additional Subordinate Judge,
Salem.

copy to:

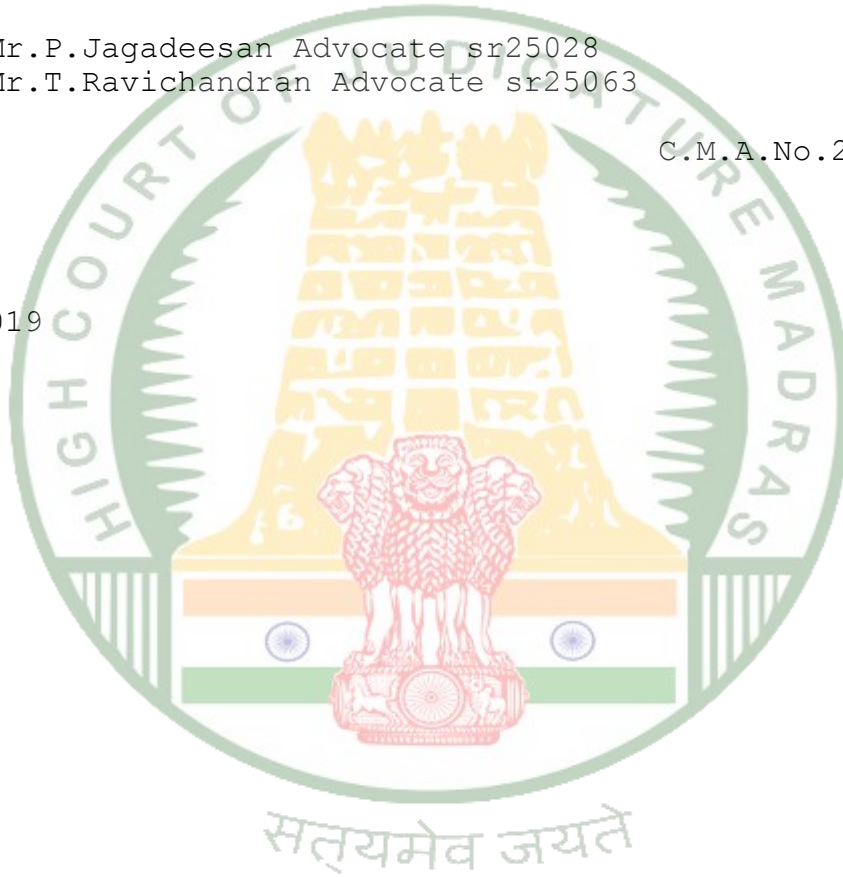
The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.P.Jagadeesan Advocate sr25028

+1 cc to Mr.T.Ravichandran Advocate sr25063

C.M.A.No.2494 of 2011

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