

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2675 of 2011
and
M.P.No.1 of 2011

The New India Assurance Company Limited,
No.1, Bharathi Road, Arcot Woodlands Complex,
Cuddalore

.. Appellant

Vs.

1.P.Radhakrishnan
2.R.Palanisamy

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.04.2011 made in MACT.O.P.No.3094 of 2008 on the file of the Motor Accidents Claims Tribunal (II Additional Sub-Court), Cuddalore.

For Appellant : Mr.S.Manohar

For R1 :Mr.B.Jawahar

For R2 :No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.04.2011 made in MACT.O.P.No.3094 of 2008 on the file of the Motor Accidents Claims Tribunal (II Additional Sub-Court), Cuddalore.

2. The facts of the case as per claim petition is that on 09.11.2008 at about 7.00 p.m, when the claimant was standing with his Bi-cycle on the extreme left side of Pathikuppam, the 1st respondent's vehicle bearing Registration No.TN 31 H 6088 (Motor cycle) was coming from West to East direction at a high speed in a rash and negligent manner, without following the traffic rules and regulations, and it lost its control and hit the claimant and he sustained grievous injuries in the accident.

3. On consideration of oral and documentary evidence, the Tribunal has awarded Rs.2,39,435/- as compensation with 7.5% interest.

4. Before the Tribunal, P.W.1 and P.W.2 were examined on the side of the claimant and Exhibits P1 to P10 were marked. On the side of the appellant-Insurance Company, R.W.1 (Executive Officer of 2nd respondent) and R.W.2 (Junior Assistant, Regional Transport Office) were examined and Exhibits R1 to R4 were marked.

5. Aggrieved by the said award of compensation, the Insurance Company has preferred this appeal.

6. The learned counsel for the Insurance Company would submit that when the Tribunal has come to the conclusion that the claimant has suffered functional disability, adoption of multiplier method is erroneous and also drew attention of this Court to the evidence of R.W.2 and Exhibit R4.

7. Heard the learned counsel for the first respondent-claimant.

8. There is no dispute with regard to the rash and negligent driving on the part of the driver of the second respondent-owner. But, the Insurance Company would submit that the driver of the offending vehicle was having only L.M.V. driving licence and not two wheeler and therefore, the Tribunal has come to the conclusion that it is a violation of a policy condition. Accordingly, taking into consideration, the claimant being by third party, the Tribunal ordered for pay and recovery and this Court finds no error on the above aspect in fixing liability on the second respondent-owner of the vehicle and in the interest of social welfare legislation, it is ordered that the appellant-Insurance Company shall pay the amount of compensation and recover the same from the second respondent-owner.

9. As to the quantum of compensation awarded by the Tribunal, it is seen that after perusing the evidence of P.W.1 and also on going through the disability certificate issued by the Doctor Exhibit P9, this Court finds that there is no functional disability warranting adoption of multiplier method. Accordingly, the multiplier method adopted by the Tribunal is found to be erroneous and the same is hereby vacated.

10. On considering the nature of the injuries sustained by the claimant and evidence of P.W.2 Doctor, the

claimant suffered fractured in the left leg and the disability is assessed 45%.

11. Accordingly, taking into consideration the entirety of the circumstances, the disability suffered by the claimant is fixed at 40% and at the rate of Rs.2,000/- per 1% of disability, the loss of income is arrived at Rs.80,000/-. For loss of income during treatment is arrived at Rs.32,000/- (Rs.6500*5). For the other heads like extra nourishment, transport expenses and medical expenses as per the Exhibit P9 bill are found to be reasonable.

12. Accordingly, this Civil Miscellaneous Appeal is allowed and the loss of financial loss sustained by the claimant is re-assessed as above and the quantum of compensation of re-assessment being kept in tact and accordingly, the pay and recovery is ordered by the Tribunal is confirmed.

Head	Trial Court	High Court
For loss of income	Rs.1,22,400/-	---
For Pain and sufferings	Rs. 7,500/-	Rs. 9,900/-
For Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-
For Transportation	Rs. 5,000/-	Rs. 5,000/-
For Medical expenses (as per Ex.P9)	Rs. 99,535/-	Rs. 99,535/-
For loss of income during treatment	---	Rs. 32,500/-
For disability (80000*12)	---	Rs. 96,000/-
Total	Rs.2,39,435/-	Rs. 2,47,935/-

13. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited and the Insurance Company shall deposit the enhanced amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment. This Civil Miscellaneous Appeal is disposed of on the above terms. The appellant/Insurance Company is hereby directed to pay and recover the same from the owner, as has been held by the Tribunal and same be incorporated in the decree. No

costs. The claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

nvi

To
The Motor Accidents Claims Tribunal
(II Additional Sub-Court), Cuddalore.

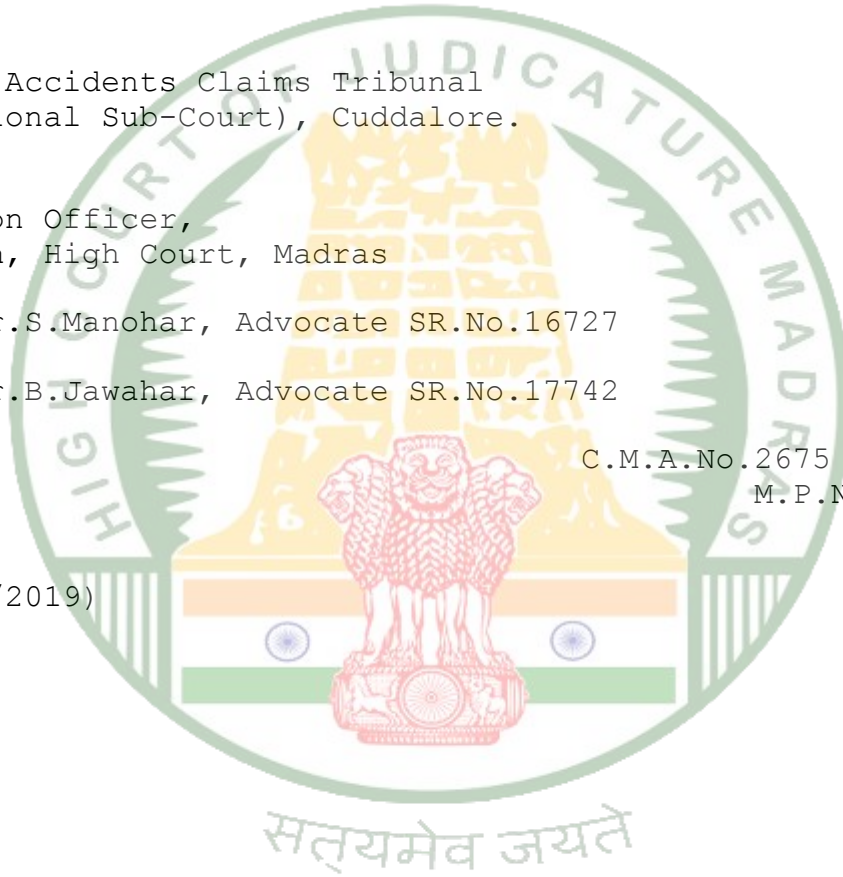
Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.Manohar, Advocate SR.No.16727

+1cc to Mr.B.Jawahar, Advocate SR.No.17742

C.M.A.No.2675 of 2011 and
M.P.No.1 of 2011

KS (CO)
GMY (22/05/2019)



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