

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2849 of 2015

and

M.P.No.1 of 2015

The Branch Manager,
National Insurance Co. Ltd.,
II Floor, 81-D, Chetty Street,
Opp Bus Stand,
Trichengode,
Namakkal District.

.. Appellant

Vs.

1.K.Mohan

2.Rajeshullah

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.11.2014 and made in M.C.O.P.No.1325 of 2014, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Dharmapuri.

For Appellant : Mrs.R.Sree Vidhya

For R1 : Mr.M.Selvam

For R2 : Ex-parte

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed against the award dated 12.11.2014 and made in M.C.O.P.No.1325 of 2014, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Dharmapuri.

2. The brief facts relating to the claim application are as follows:

On 20.12.2009 at about 17.45 hours, when the petitioner was driving Taurus lorry bearing Registration No.KA-01-D-3566 from Dindigul to Karur Road, and when the said lorry was nearing Vedamill Satirapatti Village, he noticed a vehicle coming in the opposite direction, to avoid collusion against the on coming

vehicle, he sewered to his left. At that time a lorry bearing Registration No.TN-34-B-6655 was parked without parking lights, caution lights dip and dim light and though the petitioner applied brakes, he dashed against the parked lorry. As a result of the accident, the petitioner sustained severe injuries all over the body. Immediately the petitioner was admitted at Meenakshi Mission Hospital, at Madurai and he incurred heavy medical expenses. Hence, the petitioner filed a claim petition in M.C.O.P.No.1325 of 2014 claiming a sum of Rs.5,00,000/- as compensation for the injury, disability and other loss sustained by him.

3.The learned counsel appearing for the 2nd respondent/Insurance Company denied the accident by stating that the accident had occurred only due to careless and negligent act of the driver bearing Registration No.TN-34-B-6655. The driver of the lorry TN-34-B-6655 without any indication, suddenly stopped the vehicle and the petitioner's vehicle hit the back side of the said vehicle viz. TN-34-B-6655. Hence, the owner of the said lorry and its Insurance Company are necessary party and on the said view, the claim application has to be dismissed. The other averments made by the respondents is that the 1st respondent has violated the policy condition to allowing the passenger in the said lorry. Hence, the 1st respondent alone liable to pay compensation and also stated that it is excessive one without any proof.

4.The Tribunal after analyzing the evidence and documents placed before it, has given a finding that the accident occurred only due to the rash and negligent act on the part of the 1st respondent's lorry driver. By verifying the F.I.R and the charge sheet and also the evidence of the eyewitnesses, awarded a sum of Rs.3,34,200/- under various heads.

5.Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal by stating that the liability itself is not justified, when the Tribunal failed to note that the petitioner was the driver of the lorry bearing Registration No.KA-01-D-3566, who dashed against another lorry bearing Registration No.TN-34-B-6655 which was parked on the road-side; and F.I.R was also lodged against the petitioner. The other owner and the insurer of the vehicle ought to have been added and appellant/Insurance Company has to be exonerated by the Tribunal. Further, the appellant contended that when the petitioner himself was a Tort-feaser, the F.I.R and charge sheet was against the claimant, he is not entitled to any compensation. The sum awarded under various heads are also very much opposed by the appellant and states that the claimant is entitled for compensation only under the Workmen's Compensation Act.

6.Heard the learned counsel appearing for the appellant as well as the respondents and perused all the materials available on record.

7.On hearing both sides and on perusal of records, it is observed that the findings of the Tribunal by examining the claimant and eyewitnesses and also the related documents, found that the accident had occurred only due to the negligence on the part of the 1st respondent's lorry driver. The 1st respondent is responsible for the accident. On hearing the arguments advanced by the appellant that the petitioner/victim is the driver of the said lorry at the time of accident, hence, he is not entitled for compensation. The Tribunal has considered the nature of injuries and also the disability assessed by the Doctor by examination of P.W.2/Dr. S.Krishna Kumar. The Tribunal has determined the disability at 30% and the same is stated to be on the higher side by the counsel for appellant/Insurance Company.

8.On perusal of the evidence and the documents with regard to nature of injuries and disability, the Doctor has fixed disability at 40%, but the Tribunal has taken disability only at 30%. In view of the nature of injury and other circumstances, the monthly income has been taken by the Tribunal at Rs.4,000/- p.m., which is in my considered opinion very much reasonable. But, this Court inclined to modify the disability at 20%.

9.On perusal of the compensation awarded under other heads, it is seen that the sum towards medical expenses and transport expenses are based on the relevant document and the same are found to be very much reasonable. The sum fixed towards loss of income at Rs.8,000/- is also very much reasonable. It is observed that the Tribunal has not awarded any amount for attender charges. Considering the fact that the claimant had undergone treatment from 20.12.2009 to 30.12.2009 and also the nature of injuries sustained by him, it would have been very difficult for him to attend his personal work, hence, it would be proper to award Rs.10,000/- towards attender charges. In view of the above discussions, this Court modifies the award passed by the Tribunal under various heads as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	2,59,200	1,72,800	Reduced
2.	Pain & Sufferings	15,000	15,000	Confirmed

3.	Loss of Income	8,000	8,000	Confirmed
4.	Medical Expenses	31,000	31,000	Confirmed
5.	Transportation	6,000	6,000	Confirmed
6.	Nourishment	5,000	5,000	Confirmed
7.	Mental agony	10,000	10,000	Confirmed
8.	Attender charges	-	10,000	Granted
	Total	3,34,200	2,57,800	Reduced by Rs.76,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,34,200/- is hereby reduced to Rs.2,57,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the 2nd respondent as well as the appellant/Insurance Company are directed to deposit the modified award amount along with interest and costs now determined by this Court, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimants is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP.No.1325 of 2014, if the entire amount has already been deposited by them. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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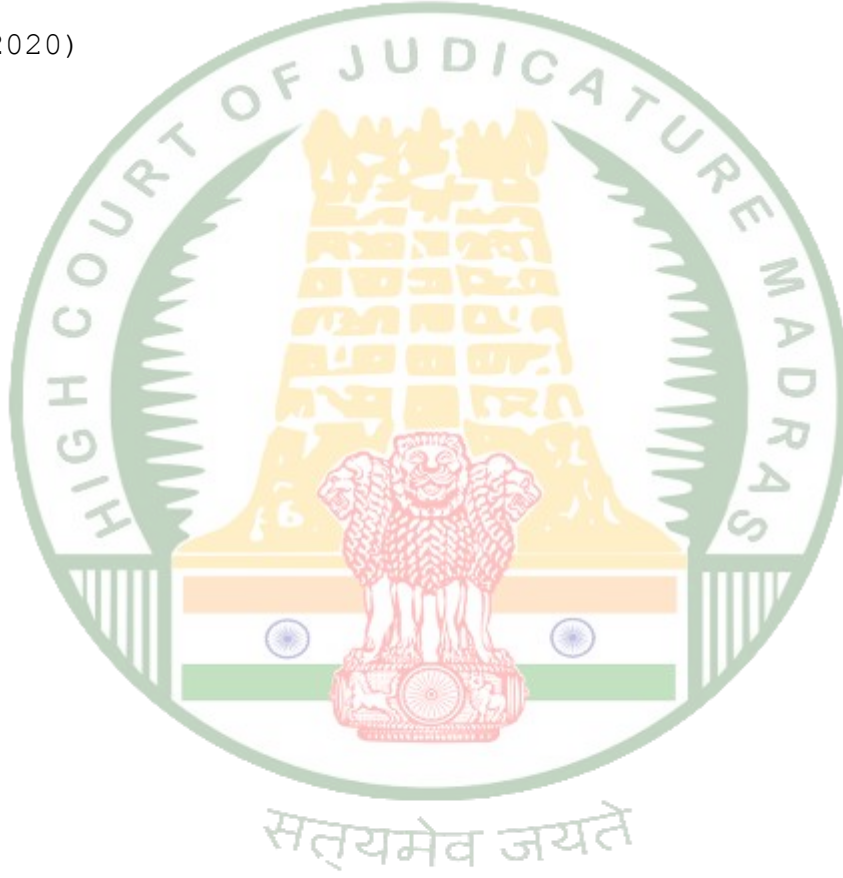
1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.M.Selvam, Advocate, S.R.No. 49044
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 50048

C.M.A.No.2849 of 2015
and
M.P.No.1 of 2015

KJ (CO)
GN(06/02/2020)



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