

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.587 OF 2016

AND

C.M.P.NO.4838 OF 2016

ICICI Lombard General
Insurance Company Ltd.,
414, Veerasavakkar Marg,
Sithivinayakar Koil (Near),
Prabhadevi, Mumbai-400 025. Appellant/2nd Respondent

Vs

1.Chennappan 1st Respondent/Petitioner
2.Secretary
Kurinchi High School,
Kavettypatty, Vallipuram Post,
Namakkal. 2nd Respondent/1st Respondent

Prayer:-

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 10.01.2014 made in MCOP.No.163 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mrs.R.Sree Vidhya

For R1 : Mr.S.Sankar

For R2 : Set Exparte before the Tribunal

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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award of a sum of Rs.72,890/- to the first respondent/claimant for the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 19.07.2012 at about 07.50 p.m., the first respondent was riding his motorcycle (TVS 50) bearing Reg.No.TN-28-H-1652, on the Namakkal - Tiruchengode Main Road. When the vehicle reached near CMS College, the driver of the bus bearing Reg.No.TN-28-D-7999, belonging to the second respondent and insured with the appellant Insurance Company, drove it in a rash and negligent manner, overtook the motorcycle (TVS 50) and then applied sudden brake without any signal and as the result of the same, the left side of the bus hit against the first respondent. Due to the said impact, the first respondent sustained grievous injuries, for which, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation before the Tribunal. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the bus and accordingly directed the appellant/Insurance Company to pay a sum of Rs.72,890/- with interest at the rate of 7.5% per annum from the date of petition, as compensation to the first respondent/claimant.

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

4.The learned counsel for the appellant-Insurance Company has submitted that a false case has been foisted against the driver of the bus bearing Reg.No.TN-28-D-7999, alleging that he had caused the accident. The counsel vehemently submitted that when the criminal case filed against the driver of the bus was closed as 'mistake of fact' and no categorical finding has been given in respect of involvement of the bus insured with the appellant Insurance Company, the Tribunal ought not to have fastened the liability on the appellant Insurance Company. On the other hand, she submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.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. He also submitted that the Tribunal has rightly fixed the liability on the part of the appellant Insurance Company, being the insurer of the bus bearing Reg.No.TN-28-D-7999, which hit the injured and fled away from the place of accident.

6.Heard the learned counsel for the appellant Insurance Company as well as the learned counsel for the first respondent/claimant and perused the materials available on record carefully and meticulously.

7.The contention of the learned counsel appearing for the appellant/Insurance Company is that the Tribunal failed to consider the evidence let in by the appellant and also the documents filed by the appellant which shows that the police closed the case as "mistake of fact" by filing final report. The said contentions are contrary to the materials available on record. The Hon'ble Apex Court has held that the Tribunal has to independently consider the evidence let in before the Tribunal to arrive at the findings in respect of negligence and liability. The proceedings in the criminal case and the investigation done by the police are not binding on the Tribunal. The Tribunal, considering the evidence let in by the 1st respondent/claimant and also taking note of the fact that no documentary evidence was produced by the appellant to establish that the criminal case was closed as mistake of fact, held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the second respondent and the appellant-Insurance Company as an insurer of the vehicle, is liable to pay the compensation. There is no perversity in the said findings warranting interference by this Court.

8.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount with interest and costs, as ordered by the Tribunal, after deducting 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 is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

gbi/km

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

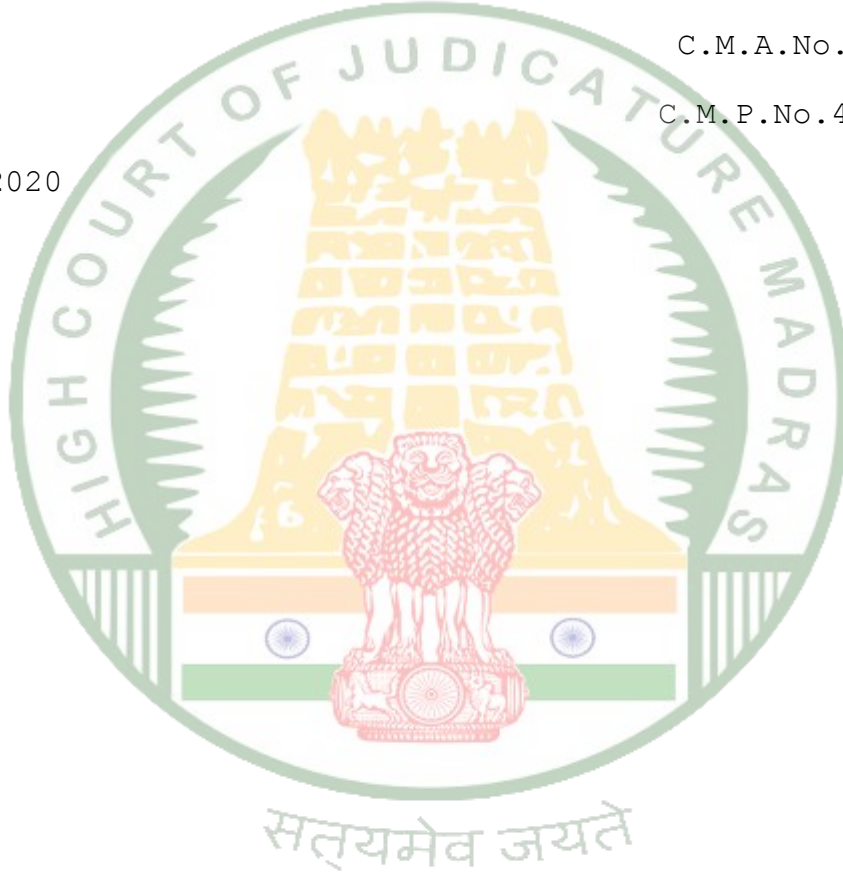
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The Section Officer,
VR Section, Madras High Court.

+lcc to Mrs.R.Sree Vidhya, Advocate, S.R.No.88316

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GP (CO)
CS/18/11/2020



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