

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2729 of 2019

Kaliannan (Died)
Kaliammal (Died)

Kesavan ... Appellants / Petitioners
Duraismi (Died)

Vs.

1. Vennila

2. National Insurance Co., Ltd.,
81-D, Chetty Street,
Opp: Bus Stand, Tiruchengode,
Namakkal District. ... Respondents / Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 29.01.2019 made in M.C.O.P.No.130 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Judge Court), Sankari.

For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.01.2019 made in M.C.O.P.No.130 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Sankari.

2. The case of the appellants is that on 09.02.2007 at about 09.00 p.m., while the first appellant, namely, Kaliannan (Died), was going near Co-Operative Petrol Bunk, Seetharampalayam, at extreme left side of the Tiruchengodu to Sankari Road in Tiruchengode, by a walk, a Maruthi Car bearing Registration No.TN-34-A-7500 driven by the driver of the first respondent in a rash and negligent manner, hit against him and caused accident. On account of which, he had sustained grievous injuries all over his body and immediately he was taken to the Krishna Hospital at Tiruchengode and admitted as an inpatient from 09.02.2007 to 16.02.2007. In spite of the best treatment given, he had become permanently disabled and

he was not able to do his work as before. Since the accident occurred only due to the negligent driving of the first respondent's driver, he filed a Claim Petition before the Motor Accident Claims Tribunal (Subordinate Judge Court), Sankari, claiming a sum of Rs.3,00,000/- as compensation for the expenditure made for the treatment and for the permanent disability.

3. Denying the mode of accident, the respondent insurance company has contended that there was no negligence on the part of the first respondent's driver and it is the appellant who drove the vehicle in a rash and negligent manner and hit against the above said Maruthi Car. Further, there is no valid proof to prove the age, occupation and income of the appellant and therefore, they are not liable to pay any compensation to him.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.4,75,000/- as compensation under the following heads :

S.No	Particulars	Amount in Rs.
1.	Disability	2,05,000/-
2.	Medical Expenses	80,000/-
3.	Pain and Sufferings	1,00,000/-
4.	Transport Expenses	15,000/-
5.	Extra Nourishment	30,000/-
6.	Attender Charges	15,000/-
7.	Simple Injury	25,000/-
8.	Loss of Property	5,000/-
	Total	4,75,000/-

5. Aggrieved by the award, the appellants have preferred this appeal before this Court by submitting that the Tribunal has awarded very meagre amount as compensation under the head of disability.

6. Heard the learned counsel on either side and perused the materials available on record.

7. On perusal of the award dated 29.01.2019 made in M.C.O.P.No.130 of 2007, it is seen that there is no relevant document filed before the Tribunal to prove that the claimant was died only due to the grievous injuries sustained by him. While that being so, the sum awarded by the Tribunal under the above said heads is very much on the higher side. Further, on considering the fact that the claimant had not died due to the said accident, the sum awarded under the heads of disability and pain and sufferings is found to be unreasonable, and

instead of that, a sum of Rs.50,000/- can be awarded for Mental Agony. Hence, the sum of Rs.2,05,000/- awarded under the head of disability and the sum of Rs.1,00,000/- awarded under the head of pain and sufferings are hereby removed, and instead of that, a sum of Rs.50,000/- is awarded for Mental Agony. The sum of Rs.5,000/- awarded under the head of loss of property is also found to be meagre and therefore, the same is enhanced to Rs.25,000/-. The remaining sums awarded under all other heads are properly considered by the Tribunal and therefore, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified in the following manner :

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or removed
1.	Disability	2,05,000/- -	-	Removed
2.	Medical Expenses	80,000/-	80,000/-	Confirmed
3.	Pain and Sufferings	1,00,000/- -	-	Removed
4.	Mental Agony	-	50,000/-	Granted
5.	Transport Expenses	15,000/-	15,000/-	Confirmed
6.	Extra Nourishment	30,000/-	30,000/-	Confirmed
7.	Attender Charges	15,000/-	15,000/-	Confirmed
8.	Simple Injury	25,000/-	25,000/-	Confirmed
9.	Loss of Property	5,000/-	25,000/-	Enhanced
	Total	4,75,000/- -	2,40,000	Reduced by 2,35,000/- -

8. With the above modification, this Civil Miscellaneous Appeal is disposed of and the second respondent insurance company is directed to deposit the modified award amount i.e. Rs.2,40,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

To

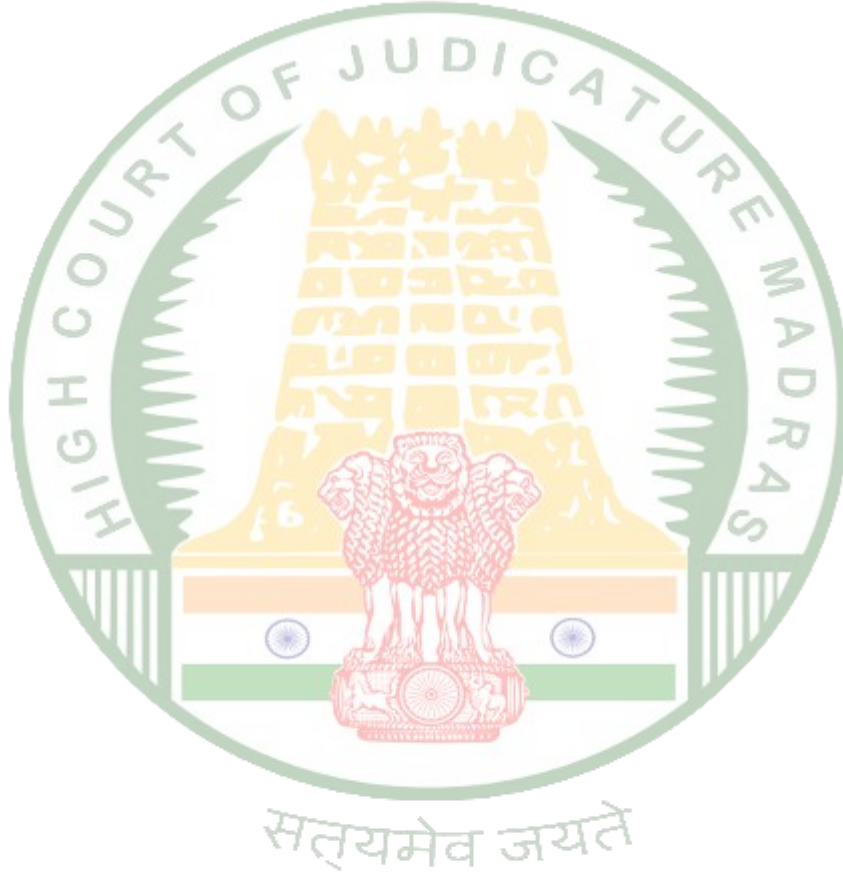
The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankari.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 74124

+2cc to Mr.C.Paranedharan, Advocate, S.R.No. 73497

C.M.A.No.2729 of 2019

PVS (CO)
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