

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1305 of 2014

M.Senthilkumar @ Madhevasamy ... Appellant /Claimant

Vs.

1. R.Raghupathy
2. A.Karuppusamy
3. The New India Assurance Company Limited,
No.12, New Hospital Road, Gobichettipalayam,
Erode District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act against the orders dated 12.04.2013 passed in MCOP No.865 of 2010 passed by the Subordinate Judge/Motor Accident Claims Tribunal, Sathiyamangalam.

For Appellant : Mr.S.Kamadevan

For Respondent 3 : No appearance

R1 & R2 : Exparte

JUDGMENT

The appellant is the claimant in MCOP No.865 of 2010 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Sathiyamangalam.

2. The appellant/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident that took place on 05.02.2006.

3. The case of the claimant is that the on 05.02.2006 at about 12.00 noon, he was riding his two wheeler bearing registration No.TN-39A-5598 on Coimbatore-Sathiyamangalam main road and when he was nearing Senbagapudur Bridge, a speeding lorry bearing registration No.TED 9657 belonging to the 2nd respondent hit the motorcycle, as a result of which he sustained injuries all over his body. According to the claimant he was

admitted as an inpatient at Government Hospital, Sathiyamangalam and thereafter at Sri Ramakrishna Hospital, Coimbatore for better treatment. It is also his contention that the rash and negligent driving of the driver (first respondent) of the lorry was the cause of accident and that since the owner of the lorry (2nd respondent) insured his vehicle with the third respondent, insurance company, both of them are jointly and severally liable to pay compensation to him.

4. The driver and the owner of the vehicle remained absent before the Tribunal and therefore, they were set exparte. The Insurance company contested the claim petition.

5. The learned Subordinate Judge/Motor Accident Claims Tribunal, Sathiyamangalam after analysing the evidence on record awarded a compensation of Rs.3,45,447/- together with interest at the rate of 7.5% per annum. However, the Tribunal reduced 50% from the compensation amount by observing that the claimant also equally contributed to the accident. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal.

6. Mr.S.Kamadevan, learned counsel appearing for the appellant/claimant would contend that the Tribunal had fixed contributory negligence on the part of the claimant mainly on the basis that he had admitted the rough sketch (Ex.P3) filed by the police. He would therefore contend that the Tribunal was wrong in fixing contributory negligence on the part of the claimant and that too at 50% .

7. No appearance on behalf of the 1st and 2nd respondents and also the 3rd respondent, The New India Assurance Company Limited, Gobichettipalayam.

8. In the instant case, the Sub Inspector of Police, Sathiyamangalam after completing investigation, laid a charge sheet against the driver of the lorry bearing registration No.TDE 9657 for the offences punishable under Section 279 and 338 of the Indian Penal Code. Though the criminal court records are not binding on the Tribunal, the final report filed by the police cannot be thrown out. The rough sketch was drawn by the police subsequent to the accident and therefore, it cannot be the sole reason to fix contributory negligence on the part of the claimant, in the absence of acceptable evidence on the side of the respondents. Moreover, both the driver and the owner of the lorry did not contest the claim petition and in fact, as already observed, they remained absent and were set exparte. In the circumstances, contributory negligence fixed on the part of

the claimant by the Tribunal cannot be sustained.

9. As regards the quantum of compensation is concerned, the Tribunal had awarded a compensation of Rs.3,45,447/- under various heads, which is extracted hereunder.

Sl. No.	Heads	Amount
1.	Pain and sufferings (7500x6)	45,000
2.	Attender's charges	18,000
3.	Extra Nourishment	9,000
4.	Ambulance bill	1,000
5.	Medical bills (Ex.P10 series)	1,24,850
6.	Medicine bills (Ex.P11 series)	3,522
7.	Hospital bills (Ex.P12 series)	35,250
8.	for Blood	1,825
9.	loss of income (4500x6)	27,000
10	Partial permanent disability 40% (40x2000)	80,000
11	Total	3,45,447

Dr.K.Thambiran (PW2) had assessed partial permanent disability of the claimant as 58%. The assessment made by the doctor as 58% is definitely on the higher side and the Tribunal after giving cogent reasons assessed the partial permanent disability of the claimant as 40%, which in the opinion of this court is perfectly in order. A perusal of the Award passed by the Tribunal also seems to be reasonable and therefore, I do not see any reason to enhance the compensation amount awarded by the Tribunal.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The orders passed by the Tribunal by fixing Contributory negligence on the part of the claimant is set aside. The quantum of compensation awarded by the Tribunal is upheld.

(iii) The insurance company is directed to deposit the compensation amount of Rs.3,45,447/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, within four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Insurance Company, the claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Asst.Registrar (CS-IX)

/true copy/
Sub Asst. Registrar

mst

To

1. The Subordinate Judge.
Motor Accident Claims Tribunal, Sathiyamangam.

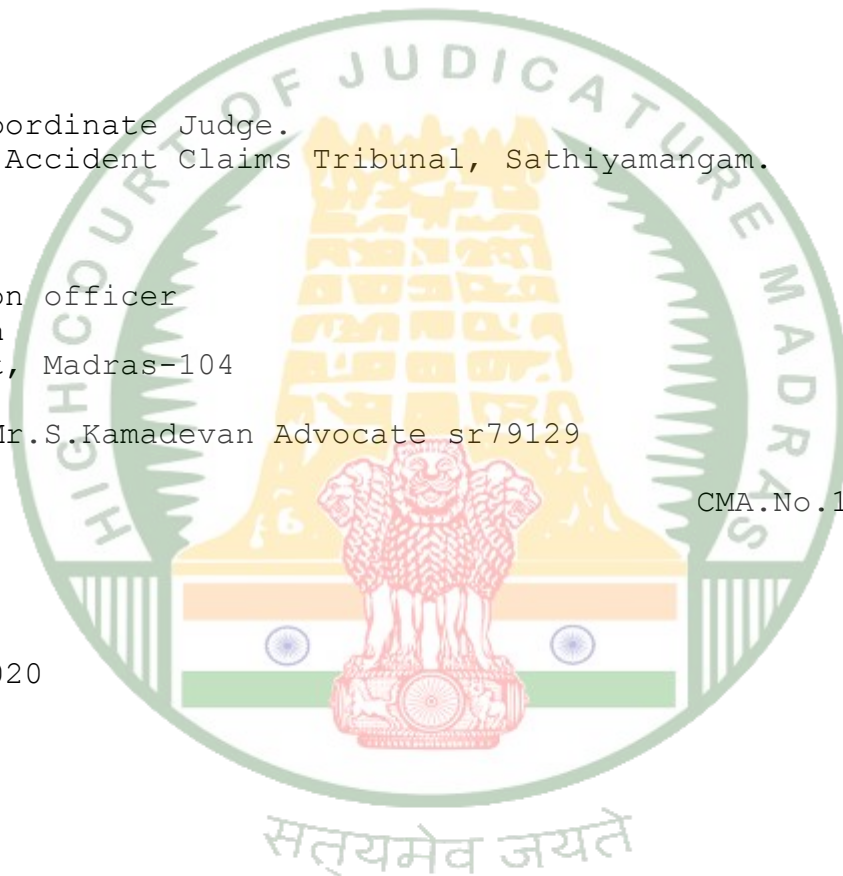
copy to

The Section officer
VR Section
High Court, Madras-104

+1 cc to Mr.S.Kamadevan Advocate sr79129

CMA.No.1305 of 2014

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