

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM:

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.386 of 2008
and M.P.No.1 of 2008

United India Insurance Company Limited,
Cuddlore.

.... Appellant

Vs.

1.G.Elumalai
2.V.Mahadevan

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 10.10.2006 made in MCOP No.506 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Cuddlore.

For Appellant : Mr.S.Arun Kumar

Respondent No.1 : No appearance

Respondent No.2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against

the award dated 10.10.2006 made in MCOP No.506 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Cuddlore.

2. The appellant/Insurance Company is the second respondent in M.C.O.P.No.506 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Cuddlore. The first respondent filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him, in the accident that took place on 01.10.2004.

3. According to the first respondent, while he was proceeding in a bicycle from Nellikuppam to Vazhapattu, near Nellikuppam Ayyanar Temple, at that time a Tractor-with-Trailer bearing Registration No.T.T.F.No.8663 belonging to the second respondent and insured with the appellant, driven by its driver in a rash and negligent manner, hit against the first respondent's bicycle and caused the accident. Due to the accident, the first respondent sustained severe injuries.

4.The second respondent remained exparte before the Tribunal as well as before this Court. Though notice to the first respondent was served, there is no representation for him either in person or through his learned counsel.

5.The appellant filed counter statement and denied involvement of the alleged bicycle in the accident. According to the appellant, the manner of accident narrated in the FIR and the petition is false. The driver of the offending vehicle did not possess valid and effective driving license at the time of accident. Hence, the appellant is not liable to pay any compensation to the first respondent. In any event, the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the first respondent examined himself as P.W.1 and one Dr.Sivasubramaniyam as P.W.2 and 5 documents were marked as Exs.P1 to P5. On the side of the appellant/Insurance Company, no oral and documentary evidence was let in.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tractor belonging to the second respondent and directed both the second respondent as well as the appellant/Insurance Company being insurer of the offending vehicle to jointly and severally pay a sum of Rs.3,81,600/- as compensation to the first respondent.

8. Against the said award dated 10.10.2006 made in MCOP No.506 of 2005, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the Tribunal erred in holding that the accident has occurred due to negligence on the part of the driver of the tractor belonging to the second respondent merely relying on the contents of FIR. The first respondent failed to prove the age, income and nature of injuries sustained by him in the accident. The first

respondent has not let in any evidence to prove that he suffered greivous injuries. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant and perused the entire materials available on record.

11.It is the contention of the first respondent that the accident has occurred only due to rash and negligent driving by the driver of the tractor, belonging to the second respondent and the first respondent suffered grievous injuries. To substantiate the said contention, the first respondent examined himself as P.W.1 and deposed that as to how the accident has occurred and marked the First Information Report as Ex.P1, which was registered against the driver of the tractor. The appellant has not let in any evidence to disprove the evidence of the first respondent and contents of the First Information Report. The Tribunal considering the evidence of the first respondent, Ex.P1/First Information Report and in the absence of contra evidence on the part of the appellant/Insurance Company, held that the accident has occurred

only due to rash and negligent driving by the driver of the tractor, belonging to the second respondent. There is no error in the said findings of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, the first respondent stated in the claim petition that at the time of accident, he sustained grievous injuries and due to the injuries sustained in the accident, he could not continue his work as he was doing earlier and therefore, he suffered loss of earning power. To substantiate this contention, the first respondent examined himself as P.W.1 and examined one Doctor as P.W.2. P.W.2/Doctor issued the disability certificate as Ex.P5. The Tribunal considering the wound certificate, Ex.P2 and disability certificate, Ex.P5, adopted multiplier method and awarded a sum of Rs.3,45,600/- towards loss of earning. There is no evidence to show that the first respondent suffered functional disability and there is loss of earning capacity. In the absence of any material evidence, the multiplier method adopted and the compensation awarded by the Tribunal towards loss of earning power are not correct. Therefore, a sum of Rs.3,45,600/- awarded by the Tribunal towards loss of

earning power is excessive and the same is modified to Rs.1,50,000/- as lumpsum compensation towards loss of earning power and loss of income. The Tribunal has awarded a sum of Rs.1,000/- towards transportation, which is meagre and hence, the same is hereby enhanced to Rs.2,000/-. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment, a sum of Rs.3,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal under the head of pain and sufferings and extra nourishment are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income & disability	3,45,600/-	1,50,000/-	reduced
2.	Pain & sufferings	25,000/-	25,000/-	confirmed
3.	Extra nourishment	10,000/-	10,000/-	confirmed
4.	Transportation	1,000/-	2,000/-	confirmed
5.	Attendant charges	-	3,000/-	granted
	Total	Rs.3,81,600/-	Rs.1,90,000/-	reduced by

				Rs.1,91,600/-
--	--	--	--	----------------------

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,81,600/- is hereby reduced to Rs.1,90,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to deposit the modified award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the modified award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is permitted to withdraw excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.506 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Cuddalore, if the entire award amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

02.01.2020

Index: Yes/ No
Internet: Yes/ No
vkr

To

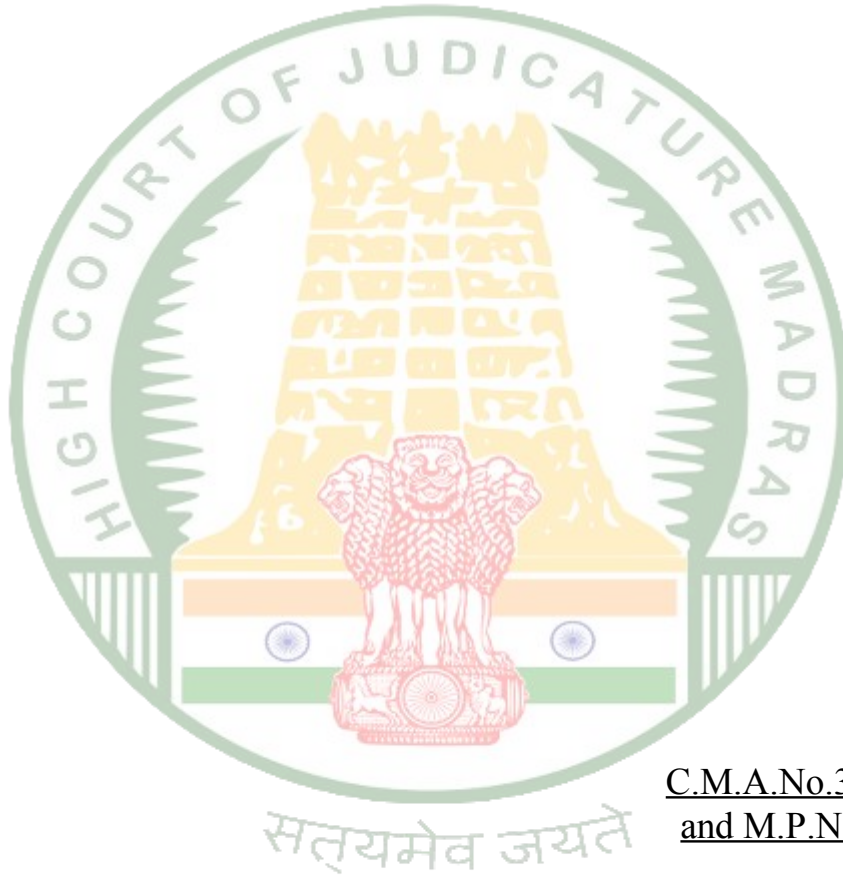
1. The Motor Accident Claims Tribunal
The Additional Subordinate Judge, Cuddalore.
2. The Section Officer,
V.R. Section
High Court, Madras.



WEB COPY

V. BHAVANI SUBBAROYAN,J.

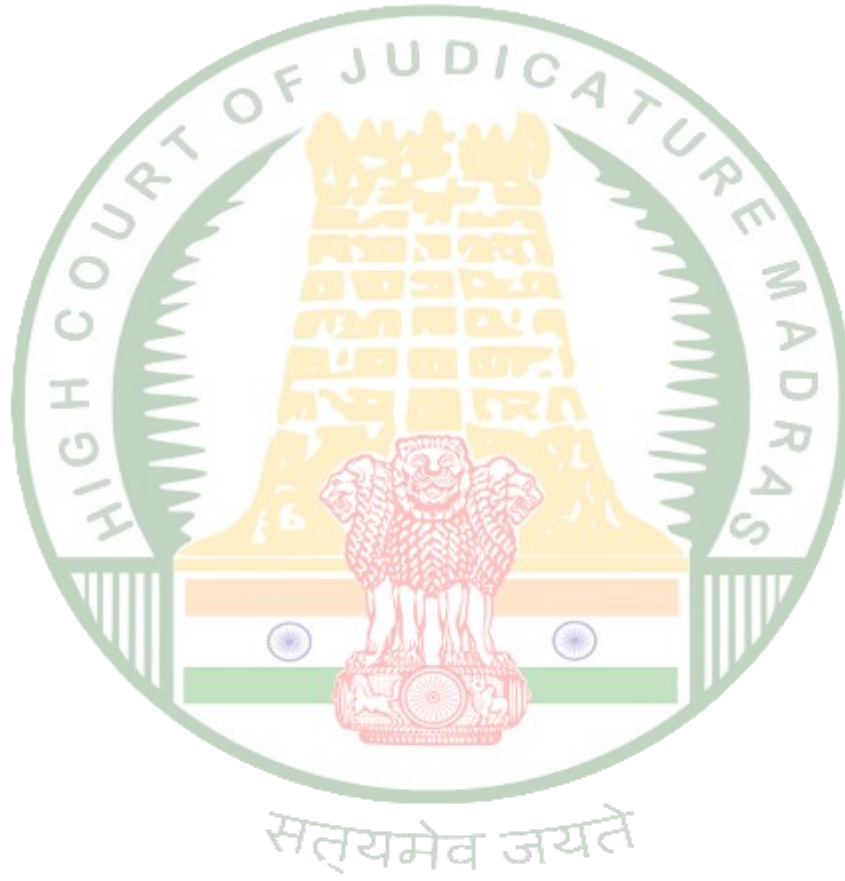
vkf



C.M.A.No.386 of 2008
and M.P.No.1 of 2008

WEB COPY

02.01.2020



WEB COPY