

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.544 of 2014

M/s.Oriental Insurance Co. Ltd.,
Represented by its Branch Manager,
No.3-L, Siddha Veerappa Chetty Street,
Dharmapuri. Appellant/2nd Respondent

Vs.

1. Chinnasamy1st Respondent/Petitioner
2. Murugan2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree passed in M.C.O.P.No.42 of 2009 on 05.07.2012 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri.

For Appellant : Mr.J.Chandran
For R1 : Mr.D.Selvaraja
For R2 : Mr.P.Satheesh Kumar

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.07.2012 made in M.C.O.P.No.42 of 2009 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri.

2. The case of the appellant is that on 06.04.2007 at about 19.30 hours, the first respondent was proceeding in a Motorcycle bearing Registration No.TN-29-M-1009 near Vengachangal Factory in Morappur to Eachampadi Road to engage a lorry for transporting sugarcane from his lands. At that time, a Tractor bearing Registration No.TN-33-U-3659 belonged to the second respondent and insured with the appellant insurance company was coming from Eachampadi side in a rash and negligent manner, hit against the motorcycle. Due to which, the petitioner sustained grievous injuries all over the body and he was taken to Shri Shellappa Hospital, Salem. He was admitted there as inpatient on 06.04.2007 and he was discharged from the hospital on 28.04.2007. After discharge from the hospital, he was taking

further treatment in the Private Hospital at Dharmapuri. In spite of the treatment given, he was not able to sit, stand and work as before due to the severe fracture sustained on the left leg. Therefore, he filed a Claim Petition under Section 166 of the Motor Vehicle Act, against the respondents, before the Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri, claiming Rs.5,00,000/- as compensation under various heads.

3. Denying the age, occupation, monthly income of the deceased and alleged accident, the appellant insurance company filed a counter affidavit before the Tribunal and sought for dismissal of the petition as they are not liable to pay any compensation to the claimant.

4. During the trial before the Tribunal, on the side of the claimant, he himself examined as P.W.1 and one Dr.S.Krishnakumar was examined as P.W.2 and the following documents were marked.

Ex.A1	:	FIR
Ex.A2	:	Insurance Policy
Ex.A3	:	Wound Certificate
Ex.A4	:	M.V.Report (TN-33-U-3659)
Ex.A5	:	M.V.Report (TN-29-M-1009)
Ex.A6	:	Driving Licence
Ex.A7	:	History Paper
Ex.A8	:	Medical Bills
Ex.A9	:	Transport Bills
Ex.A10	:	Disability Certificate
Ex.A11	:	X-Ray

On the side of the respondents, one Mr.Chithappan was examined as R.W.1 and the following documents were marked.

Ex.R1	:	Driving Licence
Ex.R2	:	Final Report
Ex.R3	:	Policy Copy
Ex.R4	:	Policy Diary

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.4,37,858/- as compensation to the claimant. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court.

6. On perusal of the award dated 05.07.2013 passed by the Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri, it is seen that the appellant insurance company has

contended before the Tribunal that the driver of the Tractor had no valid licence at the time of accident. But, they have not produced any proof to prove the same and therefore, the Tribunal has come to the conclusion that the accident happened only due to the rash and negligent driving of the driver of the Tractor.

7. As far as quantum of compensation is concerned, though it was stated by the claimant that he was earning Rs.4,500/- per month by doing Agricultural work and Milk business, no evidence has been produced to prove the same and therefore, the Tribunal has fixed the income of the claimant as Rs.3,000/- per month. As per which, the annual income of the claimant was fixed at Rs.36,000/-. Since the claimant was aged 54 years at the time of accident, the Tribunal has taken the appropriate multiplier 11 and awarded a sum of Rs.3,96,000/- as Loss of Income to the claimant. The amount awarded towards other heads i.e. Rs.15,000/- for Pain and Suffering, Rs.5,000/- for Transport, Rs.11,800/- for Extra Nourishment and Rs.10,058/- for Medical Expenses, is also reasonable and not excessive.

8. In view of the above, this Court do not find any error in the award dated 05.07.2012 passed by the Tribunal in M.C.O.P.No.42 of 2009. Hence, this Court is not inclined to interfere with the same.

9. In the result, the Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,37,858/- awarded by the Tribunal as compensation to the first respondent/claimant is hereby confirmed. The appellant insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, 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 being made, the first respondent/claimant is permitted to withdraw the same, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

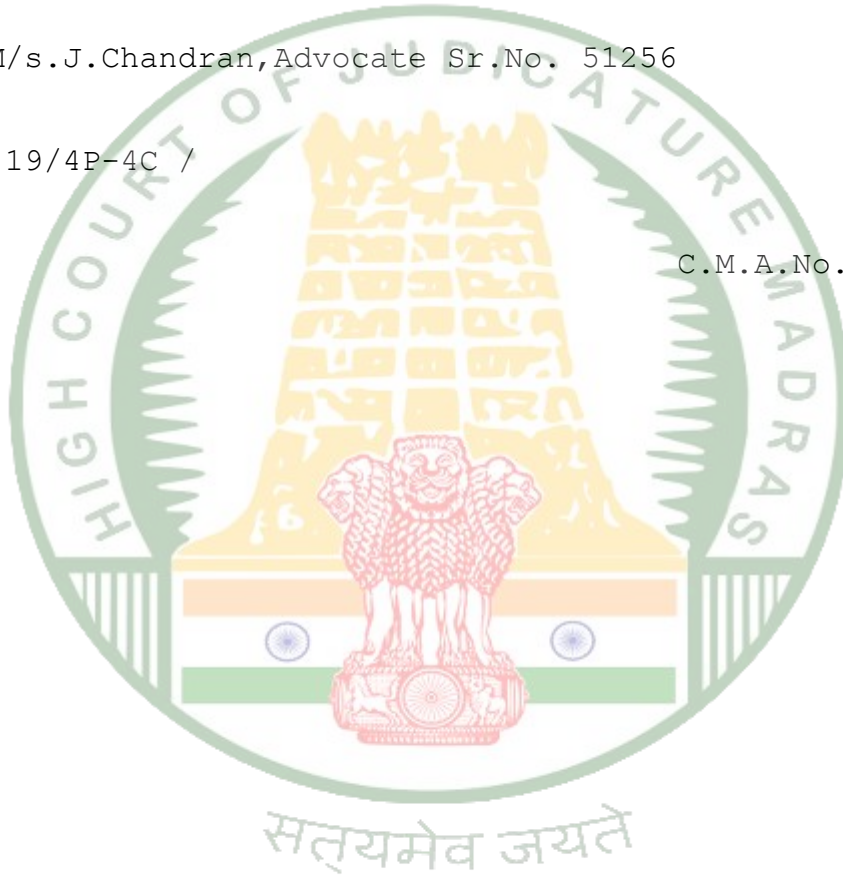
The Motor Accident Claims Tribunal
(Additional District Judge), Dharmapuri.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.J.Chandran, Advocate Sr.No. 51256

AKM/05.12.19/4P-4C /

C.M.A.No.544 of 2014



WEB COPY