

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.72 OF 2006

AND

C.M.P.NO.251 OF 2006

United India Insurance Co. Ltd.,
Mettupalayam Branch,
Karamadai Road,
Mettupalayam.

... Appellant/V Respondent

Vs

1. Abdul Sathar

2. Tamil Nadu Govt. Transport Corpn.,
Coimbatore Division-I
rep. By its Managing Director,
No.37, Mettupalayam Road,
Coimbatore - 641 043.

3. T.K.Chinnasamy

4. M/s.S.V.Madhur & Co.,
Nellithrai Road,
Mettupalayam - 641 301.

5. S.Kumaravel
(Respondents 3 to 5 set as
ex-parte before the Tribunal)

... Respondents/Petitioner,
Respondents 2, 1, 3 & 4

Prayer:-

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.02.2004 made in MCOP No.1007 of 1993 on the file of the Motor Accidents Claims Tribunal, III Additional Sub-Court, Coimbatore.

For Appellant : M/s.I.Malar

For Respondents: Mr.V.S.Ilango for R1
Mr.K.J.Sivakumar for R2

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,74,000/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 25.05.1993, at about 7.15 p.m., the first respondent herein was travelling in the bus bearing Reg.No.TN-37-N-0204 belonging to the second respondent / Transport Corporation. When the bus was proceeding on the Avinashi Road, due to the rash and negligent driving by its driver, the bus dashed against the lorry bearing Reg.No.TN-37-Z 3403 belonging to the fourth respondent herein and insured with the appellant / Insurance Company and also a moped, which were coming from Tirupur to Coimbatore. Due to the said impact, the first respondent sustained grievous injuries and fractures. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.4,47,700/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a compensation of Rs.1,74,000/- interest at the rate of 9% per annum from the date of petition, giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry.

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 the Tribunal has erred in giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry bearing Reg.No.TN-37-Z 3403. She submitted that the evidence put forth on the side of the claimant/first respondent makes it clear that the accident had occurred only due to the rash and negligent driving of the bus bearing Reg.No.TN-37-N-0204 by its driver. It is also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the second respondent/Transport Corporation has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the compensation which is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

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

7.The first respondent/claimant has been examined as P.W.1 before the Tribunal. He deposed before the Tribunal that on 25.05.1993, at about 7.15 p.m., he was travelling in the bus bearing Reg.No.TN-37-N-0204 from Tirupur to Coimbatore; that a moped was proceeding in front of the bus; that the driver of the bus in which he was travelling drove the bus in a rash and negligent manner and dashed against the moped and also the lorry and because of the same the accident had occurred. He also deposed before the Tribunal that the lorry driver also drove the lorry in a rash and negligent manner. Even though the Tribunal believed the evidence of P.W.1, it is seen that in the Charge Sheet marked as Ex.P5, only the name of the lorry driver has been stated as accused. Considering Ex.P1- First Information Report, Ex.P5-Charge Sheet and the evidence of P.W.1, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

8.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.54,000/- towards medical expenses based on Ex.P9 and Ex.P10-medical bills, a sum of Rs.40,000/- towards loss of earning capacity, a sum of Rs.25,000/- towards permanent disability, a sum of Rs.12,000/- towards loss of income during treatment period. The Tribunal has also awarded a sum of Rs.20,000/- towards pain and suffering, a sum of Rs.20,000/- towards mental agony and loss of happiness and a sum of Rs.3,000/- towards transportation. The amounts awarded by the Tribunal under the above heads are very reasonable and hence, the same are confirmed. But it is seen that the Tribunal has awarded interest at the rate of 9% per annum from the date of petition, when the fact remained that the interest rate prevailing at the relevant point of time was 7.5%. Therefore, the interest rate fixed by the Tribunal is liable to be modified from 9% to 7.5% per annum from the date of petition. Hence, while confirming the quantum of compensation awarded by the Tribunal, the interest rate fixed by the Tribunal at 9% per annum from the date of petition, stands modified to 7.5% per annum from the date of petition.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The appellant Insurance Company is directed to deposit the compensation of Rs.1,74,000/- with interest at the rate of 7.5% per annum from the date of petition, less 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, the first respondent / claimant is permitted to withdraw the same, on making proper application before the

Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

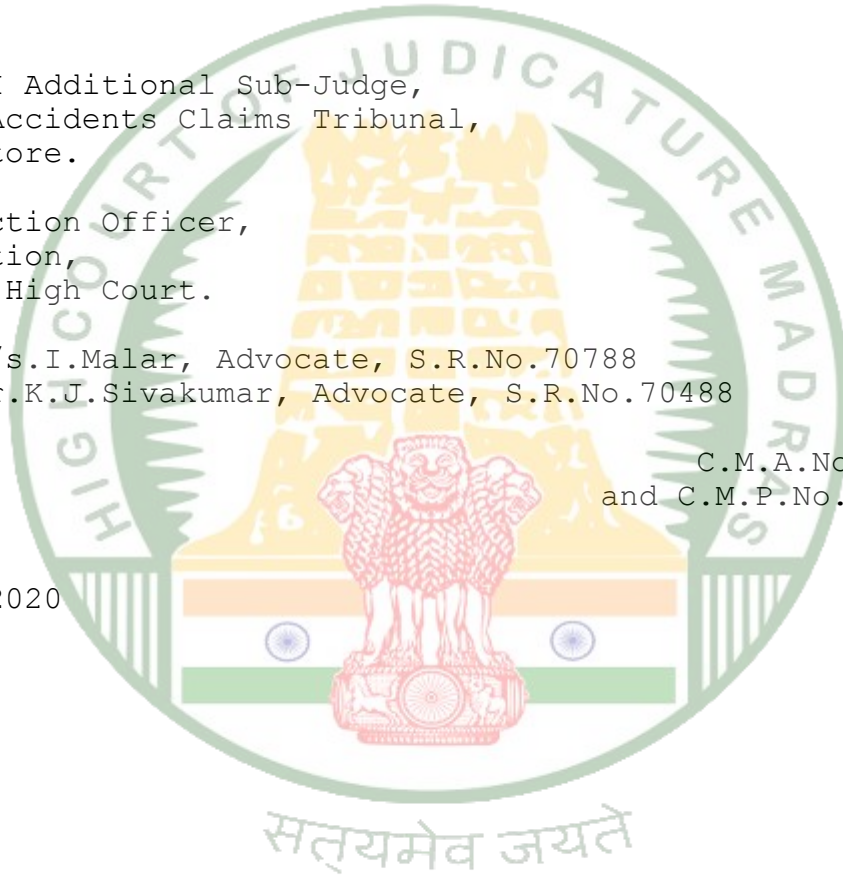
1. The III Additional Sub-Judge,
Motor Accidents Claims Tribunal,
Coimbatore.
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to M/s.I.Malar, Advocate, S.R.No.70788

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.70488

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NMI (CO)
CS/03/08/2020



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