

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 2736 & 2737 of 2017
and
C.M.P. Nos. 15448 & 15449 of 2017

The National Insurance Company Ltd.,
1st Floor, Karthikeyan Complex,
No. 403, B-10, Mettur Main Road,
Bhavani 638 302.

.. Appellant in
both C.M.As.

Vs.

1. A.Saravanan
2. R.Binoj
3. R.Rinoj

(3rd respondent is added as per order in
I.A. No. 345/2015 dated 05.11.2015 &
I.A. No. 1029/2015 dated 04.12.2015)

.. Respondents
in C.M.A. No. 2736/2017

1. Sokkammal
2. R.Binoj
3. R.Rinoj

(3rd respondent is added as per order in
I.A. No. 345/2015 dated 05.11.2015 &
I.A. No. 1029/2015 dated 04.12.2015)

.. Respondents
in C.M.A. No. 2737/2017

Common Prayer: Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, to set aside the award
dated 24.03.2016, made in M.C.O.P. Nos. 321 & 368 of 2014, on
the file of the Special Subordinate Judge at Erode District.

For Appellant : Mr.J.Chandran

For Respondents: Ms.R.Shase (for R1)
for M/s. M.Guruprasad

For R2,3 : Notice Dispense with vide Court
order dt 12/9/17

Page numbers

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the appellant-Insurance Company, to set aside the award dated 24.03.2016, made in M.C.O.P. Nos. 321 & 368 of 2014, on the file of the Special Subordinate Judge at Erode District.

2.Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The 1st respondent in both the appeals/claimants filed M.C.O.P. Nos. 321 & 368 of 2014, on the file of the Special Subordinate Judge, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.10,00,000/- and Rs.5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 03.04.2014.

4.According to the 1st respondent in both the appeals, on 03.04.2014 at about 9.00 A.M, the 1st respondent in C.M.A. No. 2736 of 2017 was riding TVS XL bearing Registration No. TN-34-A-4034 with the 1st respondent in C.M.A. No. 2737 of 2017, who is his mother, as pillion rider. While so, the 2nd respondent rode the motorcycle bearing Registration No. TN-56-A-4297 belonging to the 3rd respondent in a rash and negligent manner, dashed against the TVS XL driven by the 1st respondent in C.M.A. No. 2736 of 2017 and caused the accident. In the said accident, both the 1st respondents sustained injuries and were admitted in Government Hospital, Erode and took treatment as in-patient from 03.04.2014 to 21.04.2014.

4(i).The 1st respondent in C.M.A. No. 2736 of 2017 was working as a Mason and was earning a sum of Rs.15,000/- per month. In the accident, he sustained bone fractures at left knee, below left knee, grievous injury on left fingers and palm, abrasion all over the body. The 1st respondent in C.M.A. No. 2737 of 2017 was working as Chithal and was earning a sum of Rs.7,000/- per month. In the accident, she sustained bone fractures below right knee, at right thigh, at right knee, grievous injury on forehead, injury on left foot, injury on right elbow and abrasion all over the body. P.W.3 - Doctor assessed the percentage of disability of the 1st respondents at 40% and 45% respectively. Due to the same, both the 1st respondents could not do the work as they were doing earlier and claimed compensation by filing claim petitions.

Page numbers

5.The 2nd respondent filed counter statement, which was adopted by the 3rd respondent. According to the respondents 2 and 3, the 1st respondent in C.M.A. No. 2736 of 2017 was riding TVS XL in a rash and negligent manner and dashed against the motorcycle driven by the 2nd respondent, insured with the appellant, and caused the accident. If at all any compensation is payable, the appellant is only liable to pay the same and prayed for dismissal of the claim petitions as against the respondents 2 and 3.

6.The appellant filed counter statement, submitting that the accident occurred only due to rash and negligent riding by the 1st respondent in C.M.A. No. 2736 of 2017, as he crossed the road and invited the accident himself. The amounts claimed by the 1st respondent in both the appeals, under various heads, are highly excessive.

7.Before the Tribunal, the appellants examined themselves as P.W.1 and P.W.2 respectively and examined one Doctor as P.W.3 and marked 25 documents as Exs.P1 to P25. The appellant and respondents 2 and 3 did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent, rider of the motorcycle belonging to the 3rd respondent, insured with the appellant, and directed the 3rd respondent to pay a sum of Rs.3,92,750/- and Rs.3,84,750/- as compensation to the 1st respondent in both the appeals respectively.

9.Against the common award dated 24.03.2016, made in M.C.O.P. Nos. 321 & 368 of 2014, the appellant-Insurance Company has come out with the present appeals.

10.Learned counsel appearing for the appellant though raised grounds with regard to negligence fixed on the part of the 2nd respondent/rider of the motorcycle, at the time of arguments, restricted his claim only with regard to quantum of compensation. Learned counsel appearing for the 1st respondent examined themselves as P.W.1 and P.W.2 and examined P.W.3 - Doctor to prove the nature of injuries sustained by them and the disability suffered. The 1st respondents have filed documents to prove the treatment taken by them and expenses incurred and prayed for dismissal of both the appeals.

11.Heard learned counsel appearing for the appellant as well as the 1st respondent in both the appeals and perused the

Page numbers

materials available on record.

12.From the materials on record, it is seen that the 1st respondents have produced and marked documents to prove the treatment taken by them and produced medical bills to substantiate their claim. They have also examined P.W.3 - Doctor to speak about the nature of injuries and disabilities sustained by them. P.W.3-Doctor further submitted that both the 1st respondent underwent surgeries, apart from fixing plates and screws, and hence, they require future medical treatment. On the other hand, the appellant has not let in any contra evidence to disprove the evidence of P.W.3 - Doctor. The Tribunal considering the evidence and documents filed by the 1st respondents, accepted the certificate of disability and fixed the percentage of disability at 40% for the 1st respondent in C.M.A. No. 2736 of 2017 and awarded compensation by fixing a sum of Rs.3,000/- per percentage of disability. As far as the 1st respondent in C.M.A. No. 2736 of 2017 is concerned, P.W.3 - Doctor has certified that the 1st respondent has suffered 49% disability. The Tribunal reduced the same to 48% and granted only Rs.2,000/- per percentage for compensation towards disability. The reason given by the Tribunal for reducing the disability to 48% and granting Rs.2,000/- is erroneous. In view of the same, the total amount granted by the Tribunal under different heads are not excessive.

13.In the result, both the appeals are dismissed and the award granted by the Tribunal at Rs.3,92,750/- and Rs.3,84,750/- respectively along with 7.5% interest and costs are confirmed. The appellant is directed to deposit the award amount along with proportionate interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.Nos. 321 & 368 of 2014. On such deposit, the 1st respondent in both the appeals/claimants are permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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Page numbers

To

1.The Special Subordinate Judge/
Motor Accident Claims Tribunal
Erode District.

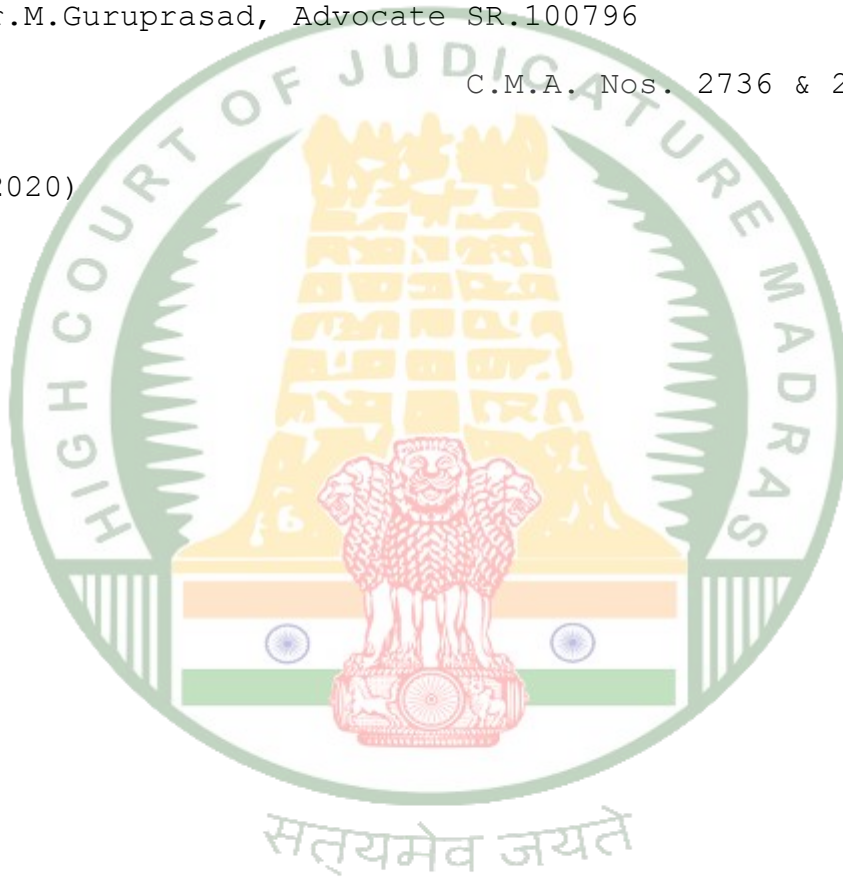
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.100300

+1cc to Mr.M.Guruprasad, Advocate SR.100796

C.M.A. Nos. 2736 & 2737 of 2017

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Page numbers