

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2020

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1836 of 2000 & 1601 of 2003

and

C.M.P.Nos17546 of 2000 & 10357 & 15302 of 2003

M/s.National Insurance
Company Limited,
Perunthurai Road, Erode.

... Appellant/5th Respondent
in C.M.A.No.1836 of 2000

Versus

1. S.S.Karuppannan
2. M.Ponnuswamy
3. Deputy Director of
Agricultural Department,
Soorampatty, Erode District.

4. Sivanandham
 5. M.Devarajan
- ... Respondents/Petitioner/Respondents 2
to 4 in C.M.A.No.1836 of 2000
(Respondents 2 to 5 exparte in Lower Court)

The Deputy Director of Agriculture,
Soorampatty,
Erode District.

... Appellant/2nd Respondent in
C.M.A.No.1601 of 2003

Versus

- 1.S.S.Karuppan
- 2.M.Ponnusamy
- 3.Sivanandam
- 4.M.Devarajan
- 5.National Insurance Company Limited,
Perundurai road,
Erode.

...Respondent/Petitioner

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... Respondents/Respondents 1,3 to 5 in
C.M.A.No.1601 of 2003

PRAYER IN C.M.A.No.1836 of 2000: Appeal preferred under section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.10.1998 made in M.C.O.P. No. 376 of 1992 on the file of the Motor Accidents Claims Tribunal (Additional Sub-Judge) at Erode.

PRAYER IN C.M.A.No.1601 of 2003: Appeal preferred under section 173 of the Motor Vehicles Act, 1988 against the

Judgment and Decree dated 21.10.1998 made in M.C.O.P. No. 376 of 1992 on the file of the Motor Accidents Claims Tribunal (Additional Sub-Judge) at Erode.

C.M.A.No.1836 of 2000

For Appellant	:	Mrs.S.R.Sreevidhya
For R2,4 & 5	:	Ex-parte
For R3	:	Mr.S.Jagnathan

C.M.A.No.1601 of 2003

For Appellant	:	Mr.S.Jagnathan
For R1 to R4	:	Notice Not ready
For R5	:	Ex-parte

COMMON JUDGMENT

Being aggerived by the award dated 21.10.1998 passed in M.C.O.P.No.376 of 1992 on the file of the Motor Accident Claims Tribunal [Additional Sub-Judge, Erode], the Deputy Director of Agriculture, who is the second respondent in the main O.P., and the National Insurance company limited, who is the fifth respondent in the main O.P., have referred these appeals.

2. For the sake of convenience, the parties are referred to as arrayed in C.M.A.No.1601 of 2003.

3. The first respondent herein has filed a claim petition seeking compensation of Rs.6,00,000/- for the injuries sustained by him in the accident occurred on 14.02.1992, alleging that, when he was travelling as a pillion rider in the Motorcycle bearing Registration No.TC-Q-1450 owned by the third respondent herein, at Pudur, an Ambassador Car bearing Registration No.TTQ 4656 owned by the appellant in C.M.A.No.1601 of 2003 driven by its driver in a rash and negligent manner, dashed against the motorcycle. Due to the impact, both the rider of the motorcycle and the pillion rider were thrown out and the first respondent herein had sustained grievous injuries. Immediately after the accident, he was taken to Anusha Hospital, Erode, where surgeries were performed. Thereafter, he was admitted in Kovai Medical Centre, Hospital at Coimbatore. There he had taken treatment as inpatient for 12 days. Thereafter, he had taken treatment as out patient. Stating that the accident has occurred due to the rash and negligent driving of the appellant in C.M.A.No.1601 of 2003, the first respondent had filed a claim petition claiming the compensation as aforesaid.

4. The appellant in C.M.A.No.1836 of 2000 has filed counter stating that the accident occurred solely on the

negligence of the driver of the car and therefore, the appellant is not liable to pay the compensation.

5. Before the Tribunal, the first respondent has examined himself as P.W.1 and one Natarajan was examined as P.W.2 and Ex.P1 to Ex.P21 were marked. The second respondent in C.M.A.No.1601 of 2003 was examined as R.W.1 and no Exhibits were marked. That apart on the side of the appellant in C.M.A.No.1836 of 2000, nobody was examined.

6. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the car and rider of the motorcycle and therefore, the appellant in C.M.A.No.1601 of 2003 as well as the appellant in C.M.A.No.1836 of 2000, who is the insurer of the motorcycle, are not liable to pay the compensation to the first respondent herein.

7. Taking the disability at 40%, the Tribunal awarded a total compensation of Rs.1,84,000/- under the following heads:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Disability	30,000/-
2.	Transportation	2,000/-
3.	Extra Nourishment	2,000/-
4.	Medical Expenses	75,000/-
5.	Pain and Sufferings	20,000/-
6.	Treatment expenses	5,000/-
7.	Future loss of earning	50,000/-
	Total	Rs.1,84,000/-

8. The learned counsel for the appellant in C.M.A.No.1601 of 2003 submitted that the learned Tribunal erred in fastening the liability on the driver of the car. Moreover, no opportunity was given to the appellant to defend the case. He would submit that the accident occurred solely on the negligence of the pillion rider of the motor cycle. Therefore, the appellant is not liable to pay the compensation awarded by the Tribunal.

9. The learned counsel for the appellant in C.M.A.No.1836 of 2000 has submitted that in the claim petition itself, it has been stated that on 14.02.1992 at about 12.00 noon, when the first respondent was travelling in the

motorcycle and was nearing to Pudur, the car owned by the appellant in C.M.A.No.1601 of 2003 driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident.

10. The first respondent herein also adduced evidence to that effect. Despite the evidence let in, the Tribunal erred in fastening the liability on the appellant/Insurance Company. Hence, prayed for setting aside the said findings of the Tribunal.

11. This Court considered the submissions made by the learned counsel for the appellant and also perused the materials available on record.

12. Challenging the negligence, both the owner of the car as well as the insurer of the motorcycle, in which the first respondent was travelling, have preferred an appeal before this Court.

13. According to the first respondent, the driver of the car has driven the same in a rash and negligent manner and caused the accident. To prove the same, the first respondent examined himself as P.W.1 and the evidence deposed that the accident occurred due to the rash and negligent driving of the driver of the car. However, regarding the accident, an F.I.R. has been registered against the rider of the motorcycle and the Criminal Court arrived at a conclusion that the rider is solely responsible for the accident occurred by the same. The rider of the motorcycle preferred an appeal before the Sessions Court, where he was acquitted from the charges, which facts were evidenced from Ex.P1 to Ex.P4 respectively.

14. However, in its award, the Tribunal held that the driver of the appellant in C.M.A.No.1601 of 2003 alone is not responsible for the accident. The rider of the motorcycle has not let in any evidence in order to prove the accident. Therefore, both the driver of the car as well as the rider of the motorcycle are held responsible for the accident. In my view, the aforesaid findings arrived at by the Tribunal is not acceptable for the reason that the cogent evidence adduced by the first respondent that the accident occurred due to the rash and negligent driving of the driver of the car. The Tribunal has arrived at a conclusion that the rider of motorcycle is also held responsible for the accident, which in my opinion, is un-sustainable.

15. On the other hand, the materials show that the accident occurred solely due to the rash and negligent driving of the driver of the car and therefore, this Court is of the view that the appellant in C.M.A.No.1601 of 2003, who is the owner of the car, is liable to pay the compensation to the

first respondent herein. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellants are aggrieved that the total compensation of Rs.1,84,000/- awarded by the Tribunal is exorbitant. As stated supra, at the time of accident, the petitioner was aged about 27 years and was doing contract work and was earning Rs.3,000/-.

16. Admittedly, in the accident, the petitioner had sustained grievous injuries on his left leg, left thigh abdomen, left ankle, chest fracture and abrasion all over the body. To prove that he has sustained grievous injuries in the accident, the first respondent has produced Ex.P3 to Ex.P21. This Court finds that he has taken treatment and hospitalised for the injuries sustained by him and further, this Court also has seen the medical records that a surgery was performed.

17. P.W.2/Doctor, who has examined the first respondent, had sustained the disability at 40%, In his evidence, P.W.2 also deposed that the plate was inserted in his leg. Taking into consideration of the evidence of P.W.2 and P.W.1 and also the medical records, the Tribunal awarded a compensation of Rs.30,000/- for the disability, which in my considered view, is just and reasonable. As far as the other heads namely "Transportation to Hospital", "Extra Nourishment", "Medical Expenses", "Pain and Sufferings" and also for the "Treatment" are concerned, since the said amounts awarded by the Tribunal are just and reasonable, this Court feels it to be confirmed. Coming to the "loss of future earning capacity", the Tribunal has awarded a sum of Rs.50,000/-. Taking into consideration of the injuries sustained by the first respondent and also the avocation, the said amount awarded by the Tribunal is reasonable. Thus, the total compensation of Rs.1,84,000/- awarded by the Tribunal is just and reasonable and the same is maintainable.

18. In the result, C.M.A.No.1836 of 2000 is allowed and C.M.A.No.1601 of 2003 is dismissed. No costs. consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Motor Accidents Claims Tribunal,
Additional Sub Court, Erode.

+1cc to Ms.R.Sreevidhya, Advocate SR.11302
+1cc to the Special Government Pleader SR.10523

C.M.A.Nos.1836 of 2000 & 1601 of 2003

GJ(CO)
CB(08/02/2021)



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