

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1861 of 2006

G.Pugazhendhi ... Appellant

Vs.

1. P.Ravi

2. The National Insurance Co., Ltd.,
No.751, Anna Salai,
Chennai - 600 002

...Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Award dated 12.12.2005 made in M.C.O.P.No.38 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track No.III, Additional District cum Sessions Judge, Poonamallee.

For Appellant : Mr.U.M.Ravichandran

For R2 : Ms.K.Saraswathi
R1 – NA

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging Judgment and Award dated 12.12.2005 made in M.C.O.P.No.38 of 2004 on the file of

the Motor Accident Claims Tribunal, Fast Track Court No.III, Additional District cum Sessions Judge, Poonamallee.

2. It is the case of the appellant that on 11.04.2003 at about 4.45 p.m., while the appellant was travelling as rider in the motorcycle bearing Regn.No.TN-50-A-7285 at M.T.H.Road, Padi from West to East, a mini van bearing Regn. No.TCZ-5012 driven rashly and negligently by its driver in a manner endangering the public safety came at a dangerous speed from the opposite direction and dashed against the motorcycle causing grievous injuries to the appellant. Since the 1st respondent is the owner of the vehicle and the 2nd respondent is the insurer of the said vehicle, the appellant has claimed compensation against the respondents. At the time of accident, the appellant was 34 years old and prior to the accident, he was working as a Senior Driver in Prasad Polypack Company, Chennai and earning a sum of Rs.4,500/- per month.

3. In contrary, the 2nd respondent has filed a detailed counter before the Tribunal denying all the averments stated in the claim petition. Further, the 1st respondent's mini lorry was driven by its driver slowly and cautiously by observing the traffic rules and regulations and it is the

appellant, who had driven the vehicle rashly and negligently and hit the 1st respondent's vehicle, for which, they cannot compensate the appellant, thereby seeks to dismiss the claim petition filed by the appellant.

4. The Tribunal after considering the pleadings, counter affidavit, witnesses and the documents produced on record had awarded a sum of Rs.87,000/- as compensation to the appellant / claimant and the same is tabulated as under. Not being satisfied with the award amount, the appellant / claimant has come up with this appeal.

Sl.No.	Heads	Amount
01	Medical Bills	Rs.35,000/-
02	Permanent Disability	Rs.35,000/-
03	Pain and Sufferings	Rs.5,000/-
04	Transportation Charges and Nutrition Expenses	Rs.2,000/-
05	Loss of Earning during treatment period	Rs.10,000/-
TOTAL		87,000/-

5. The learned counsel for the appellant contended that the Tribunal had erred in awarding a sum of Rs.35,000/- only towards medical expenses instead of Rs.87,441/- and the same is without legal basis. The Tribunal has failed to consider the evidences of P.Ws.1 and 2 and Exs.P1

to P7, whereas, according to the evidence of P.W.1, the appellant was a senior driver by profession and was earning a sum of Rs.4,500/- per month. Further, the amount awarded under the other heads are also very meagre and the same needs enhancement, he pleaded.

6. The learned counsel for the appellant in support of his contention relies on the following judgments:-

(i) Judgment of this Court reported in 2014 (2) TN MAC 420 [R.Murali V. R.Shyamala, KRB Transport, Chennai]

(ii) Judgment of Hon'ble Division Bench of this Court reported in 2005 (2) CTC 341 [J.Ravi Chandran V. Tamilnadu State Transport Corporation, Kumbakonam]

(iii) Judgment of Hon'ble Supreme Court of India reported in 2011 (2) TN MAC 651 (SC) [Sanjay Batham V. Munnalal Parihar and others]

(iv) Judgment of this Court in C.M.A.No.2552 and 3087 of 2003 [Oriental Insurance Company Ltd, V.R.Mahalingam and Another]

7. Per contra, the learned counsel for the 2nd respondent reiterated the averments stated in the counter before the Tribunal and contended that it is the appellant, who had driven the vehicle rashly and negligently, for

which, the Insurance Company cannot be made liable to pay the compensation, however, Tribunal has awarded compensation, which is just and reasonable, therefore, sought to dismiss the appeal filed by the appellant.

8. Though notice was ordered to the 1st respondent as early as on 20.07.2006 and served on 07.03.2019, there is no representation on behalf of the 1st respondent either-in-person or through learned counsel.

9. Heard the learned counsel on either side and perused the documents placed on record.

10. Before the Tribunal, the appellant was examined himself as P.W.1 and the Doctor was examined as P.W.2 and Exs.P.1 to P.7 were marked. Neither any witnesses nor any documents were marked on behalf of the respondents.

11. Since the evidence of P.W.1 corroborates with Ex.P.1, FIR and there is no evidence /witness produced by the respondents to disprove the same, the Tribunal by taking shelter of Ex.P.1, FIR and in the absence of

any material evidence on the part of the 1st respondent has rightly fixed the negligence on the part of the driver of the 1st respondent. The appellant / claimant is also not questioning about the liability and the dispute is only with regard to the quantum.

12. From the order passed by the Tribunal, it is seen that the Tribunal has fixed a sum of Rs.4,000/- as monthly income of the appellant. When the appellant has contended that he was earning a sum of Rs.4,500/- per month and in support of the same, he has produced Ex.P.5, Salary Certificate, the Tribunal has erred in fixing a sum of Rs.4,000/- as his monthly income. Therefore, this Court taking note of Ex.P.5, Salary Certificate, which shows that the appellant was earning Rs.4,500/- per month and taking into account of the fact that the appellant being a driver, would have earned easily Rs.4,500/- per month, is inclined to fix a sum of Rs.4,500/- as his monthly income. Considering the nature of injuries and treatment, viz., [Grade III Compound Comminuted Fracture tibial condyle and fibula neck with lacerated injury right leg with external fixation and skin grafting done, shortening and deformity of right leg, lacerated injury on the right forearm with muscles completely cut and other serious multiple injuries all over the body], which the appellant had undergone for his

grievous injuries, definitely, he would not have gone for job atleast a year, therefore, Rs.4,500/- X 12 = **Rs.54,000/- is hereby awarded towards loss of earning during the period of treatment.**

13. That apart, the Tribunal has awarded only a meagre amount towards pain and sufferings, Transportation and Extra Nourishment and hence a sum of Rs.20,000/-, Rs.5,000/- and Rs.5,000/- each is hereby awarded respectively. In addition, Tribunal has not awarded any amount towards attenders charges and damage to clothes. Considering the nature of the injuries and the treatment undergone by appellant, it is clear that a person would have assisted him to carryout his day today activities, hence a sum of Rs.5,000/- is hereby awarded towards Attenders Charges and Rs.1,000/- is hereby awarded towards Damage to Clothes. However, the amount awarded under the heads, medical bills and permanent disability remains unaltered. The modified award amount granted by this Court is tabulated below.

Sl. No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Enhanced / Granted / confirmed
01	Medical Bills	Rs.35,000/-	Rs.35,000/-	Confirmed
02	Permanent Disability	Rs.35,000/-	Rs.35,000/-	Confirmed
03	Pain and Sufferings	Rs.5,000/-	Rs.20,000/-	Enhanced
04	Transportation Charges and Nutrition Expenses Transportation: Nutrition Expenses:	Rs.2,000/-	Rs.5,000/- Rs.5,000/-	Enhanced
05	Loss of Earning during treatment period	Rs.10,000/-	Rs.54,000/-	Enhanced
06	Attender charges	-	Rs.5,000/-	-
07	Damage to Clothes	-	Rs.1,000/-	-
	TOTAL	Rs.87,000/-	Rs.1,60,000/-	

16. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.1,60,000/- is hereby awarded to the appellant with interest at the rate of 9% per annum from the date of petition till the date of deposit. The respondents jointly or severally are directed to deposit the said amount to to the Credit of M.C.O.P.No.38 of 2004 on the file of the Motor Accident Claims Tribunal (Fast Track Court, Additional District Sessions Judge), Poonamallee, along with interest and costs as determined by this Court,

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within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount, by filing an appropriate application before the Court concerned. No costs.

02.06.2020

Index : yes/no
Internet : yes/no
Speaking Judgment /Non-Speaking Judgment

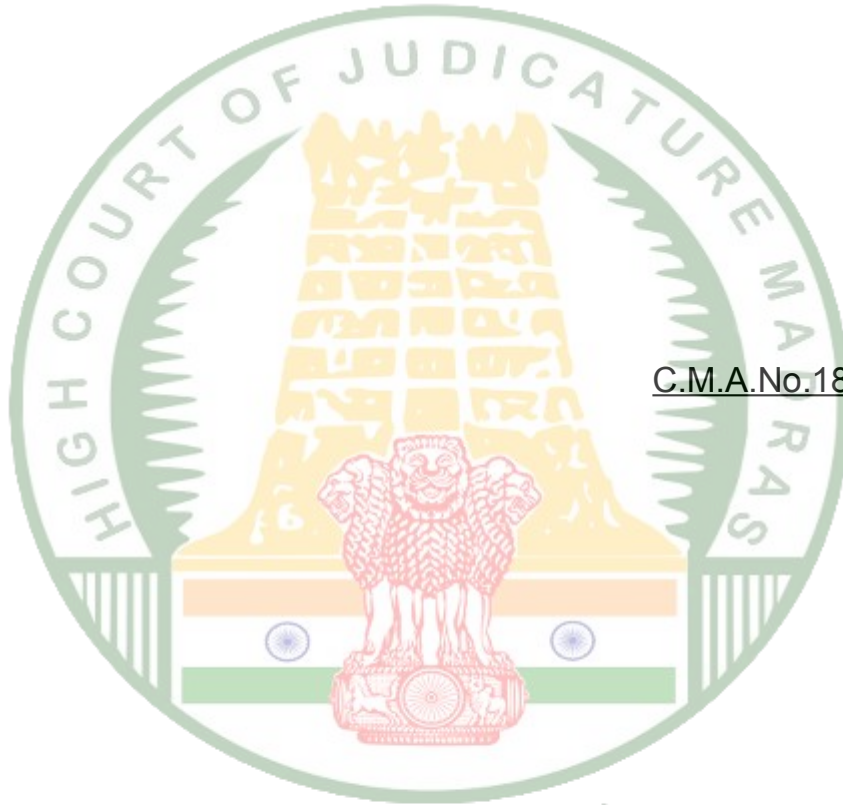
To

1. Motor Accident Claims Tribunal,
Fast Track No.III,
Additional District cum Sessions Judge,
Poonamallee.

2. The Section Officer,
VR Section,
High Court, Madras

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V.BHAVANI SUBBAROYAN.J.,

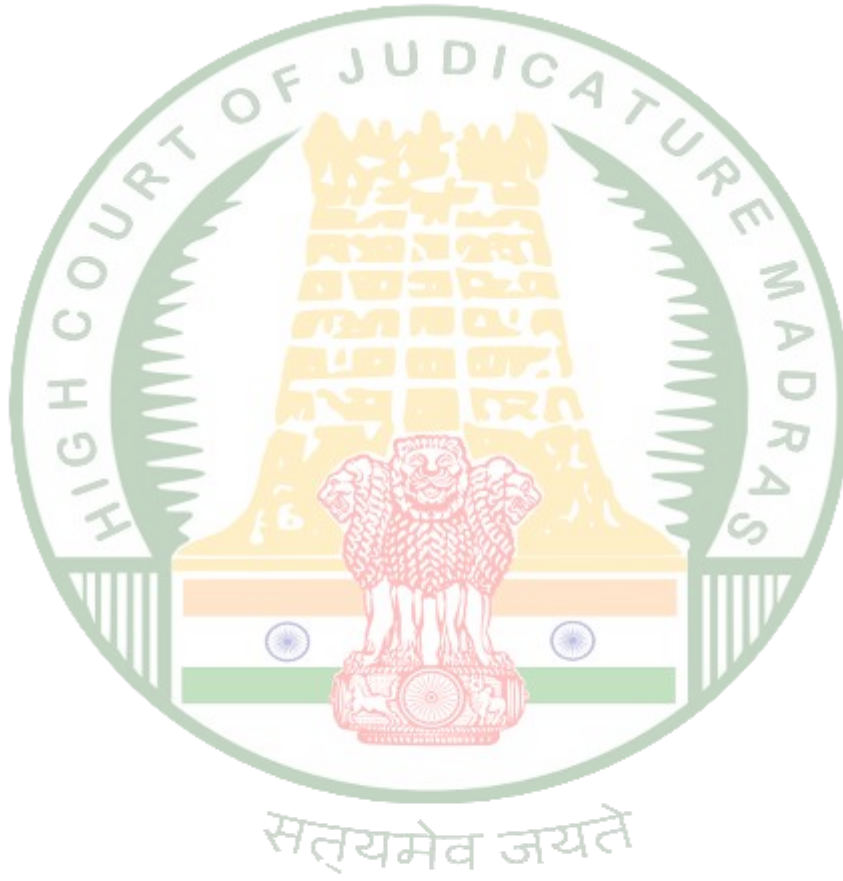


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