

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1056 of 2011

and

M.P.No.1 of 2011

The New India Assurance company Ltd.,
No.45, Moore Street, Chennai-600 001.

... Appellant/2nd respondent

Vs.

1. N. Thanigaivasan ...1st Respondent/claimant

2. P.G. Chandrasekaran ...2nd Respondent/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 13.09.2010 passed in M.C.O.P.No.615 of 2008, on the file of the Motor Accident Claims Tribunal, Poonamallee/ Fast Track Court No.1, Poonamallee.

For Appellant : Mr.K. Sivakumar

For Respondent-1 : Mr.A. Palaniappan

For Respondent-2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and decree dated 13.09.2010 passed in M.C.O.P.No.615 of 2008, on the file of the Motor Accident Claims Tribunal, / Fast Track Court No.1, Poonamallee.

2. It is the case of the first respondent/claimant that on 14.07.2008 at about 4.00 p.m when he was proceeding in his motor cycle bearing Regn.No. TN-01-AF-7195 nearby the fly over bridge at Teynampet, the second respondent drove his motor cycle bearing Reg.No.TN 02 T 3215 in a rash and negligent manner and

hit behind the motor cycle of the first respondent/claimant. In the result, the first respondent/claimant sustained multiple and grievous injuries all over the body. Hence, he filed a Claim Petition before the Motor Accidents Claims Tribunal, Poonamaallee, Fast Track Court No.1, Poonamallee claiming Rs.3,00,000/- as compensation.

3. During the trial before the Tribunal, in order to prove his case, the claimant examined himself as P.W.1 and the Doctor who issued disability certificate was examined as P.W.2. and marked seven documents viz., Ex.P1 to Ex.P7. On the side of the respondent, one witness was examined and six documents viz., Ex.R1 to Ex.R6 were marked.

4. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.1,27,000/- to the claimant. Aggrieved by the award passed by the Tribunal, the appellant/Insurance company has filed this appeal before this Court.

5. The learned counsel for the appellant/Insurance Company would submit that the negligence is on the part of the second respondent vehicle, who drove his vehicle in a high speed even without a valid driving licence. He would further contend in the absence of any documentary proof regarding the occupation and income of the claimant, the tribunal has awarded higher amount towards the head loss of income. The learned counsel for the appellant further contended that the Tribunal erred in fixing the negligence aspect and also awarded higher amount as compensation.

6. The learned counsel for the first respondent submitted that the Tribunal has considered the materials and evidence available on record in a proper perspective 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.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent.

8. On a perusal of the records, it is seen that the appellant viz., Insurance Company has filed a counter affidavit before the Tribunal, stating that there is no negligence on the part of the claimant and denies the averments in the claim petition and further stated that the second respondent herein has wantonly invited the accident.

9. With regard to the negligence aspect, i.e. Whether the accident has occurred due to the rash and negligent driving of the driver of the first respondent or due to the negligence of the second respondent, was disputed before the Tribunal and it was proved that the accident had occurred only due to the negligence of the second respondent. Therefore, the Tribunal arrived at a conclusion that the appellant/Insurance Company, who is the insurer of the first respondent's vehicle is liable to pay compensation, which is in accordance with law and there is no infirmity and the same is confirmed as such.

10. With regard to the quantum, the tribunal has arrived Rs.10,000/- towards loss of income, as there was no documentary proof to show the income of the claimant. From the materials on record, it is seen that based on Ex.P.3 and Ex.P4, the Tribunal has awarded Rs.15,000/- towards pain and sufferings and Rs.42,000/- towards medical expenses respectively. Taking into account Ex.P.6/Disability certificate issued by P.W.2/Doctor the Tribunal awarded Rs.45,000/- towards loss of future amenities for his disability. Considering other relevant materials, the Tribunal has awarded Rs.5,000/- and Rs.10,000/- towards Transportaion and Extra Nourishment respectively. Thus, the total compensation was arrived at Rs.1,27,000/-. This Court is of the opinion that the findings rendered on quantum and negligence by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence. Hence, the award passed by the Tribunal is perfectly valid in the eye of law and no interference is required.

11. It is observed from the 8th para of the award passed by the Tribunal that the 2nd respondent/Insurance Company shall pay the compensation amount and recover from the owner of the vehicle. But, in the later part in the result portion it has not been carried out. Hence, such liberty is granted to the second respondent Insurance Company herein.

12. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal in MCOP.No.615 of 2008 on the file of the Motor Accident Claims Tribunal, Poonamallee/Fast Track Court No.1, Poonamallee is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

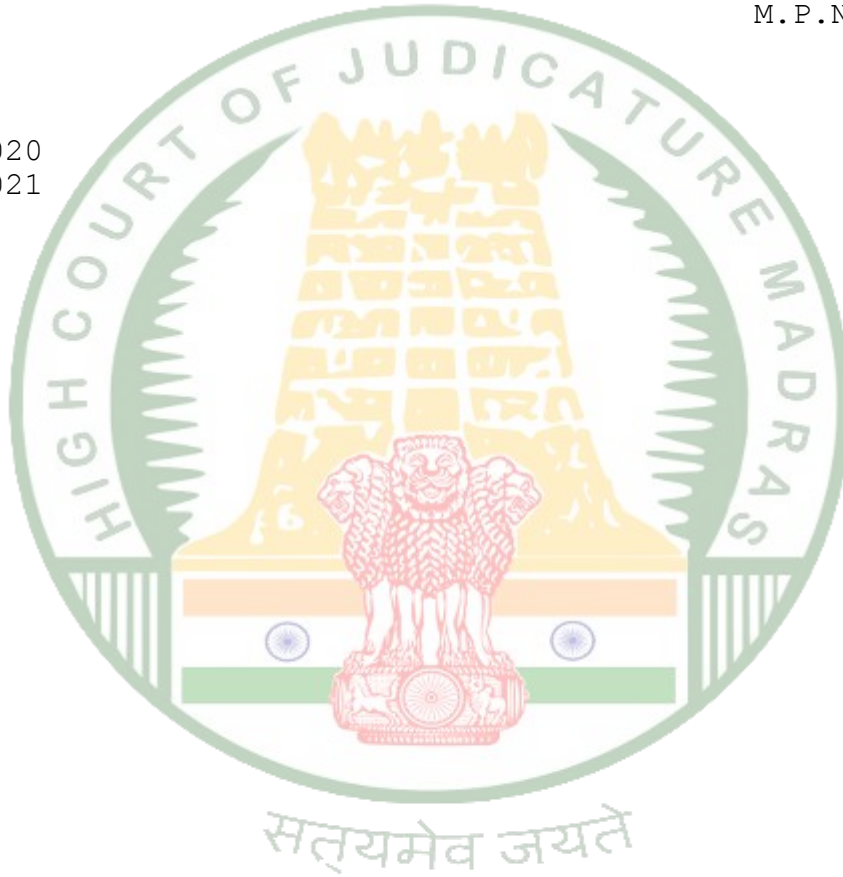
To

1.The Motor Accidents Claims Tribunal,
Poonamallee/ Fast Track Court No.1,
Poonamallee.

+1 cc to Mr.R.Sivakumar Advocate sr2474
+1 cc to Mr.A.Palaniappan Advocate sr3278

C.M.A.No.1056 of 2011
and
M.P.No.1 of 2011

vba(co)
aa14/12/2020
aa29/01/2021



WEB COPY