

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2211 of 2009

and

C.M.P.No.26775 of 2019

S.Natarajan

.. Appellant

Versus

1. J.Nagaraj

2. The Divisional Manager,
New India Assurance Company Limited,
Big Bazaar Street,
Tiruvannamalai.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 09.01.2009 made in M.C.O.P.No.555 of 2006 on the file of The Motor Accidents Claims Tribunal (Sub-Court), Tirupattur, Vellore District.

For Appellant : Mrs. Subadra
for Mrs.M. Malar

For Respondents : Mr. R. Sivakumar, for R2
No Appearance for R1

J U D G M E N T

The appeal has been filed by the claimant challenging the quantum of award passed by the tribunal in M.C.O.P.No.555 of 2006.

2. The brief facts of the case are as follows:-

(i) The appellant sustained injuries on 03.06.2006 as a result of an accident caused by a Tipper Lorry bearing Registration No.TN23 AP 7283 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.555 of 2006 seeking a compensation of Rs.7,00,000/-.

(ii) The Motor Accidents Claims Tribunal, by its Award dated 09.01.2009 in M.C.O.P.No.555 of 2006 directed the first respondent/owner of the lorry to pay the appellant a sum of Rs.91,237/- together with interest at the rate of 6%, per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard Mrs.Subadra, learned counsel appearing for the appellant and Mr. R. Sivakumar, learned counsel appearing for the second respondent.

5. The learned counsel for the appellant would submit that in the accident, the claimant sustained injuries on his left forehead, right shoulder and fracture injury on both side of his hip. At the time of accident, the appellant was 46 years old. After the accident he was taking treatment at CMC Medical hospital college Vellore. Due to the injuries sustained by the appellant in the accident, he could not sit or to do any other household work as before. Even though the Doctor, P.W.2 has assessed the disability of the appellant at 40%, the tribunal awarded only a sum of Rs.1,000/- per percentage of disability instead of awarding atleast Rs.2,000/- per percentage. It is also stated that the tribunal awarded very meager amount in respect of pain and sufferings, loss of amenities, transportation etc., therefore, the learned counsel for the appellant prayed for enhancement of the compensation.

6. There is no appearance for the first respondent/owner of the lorry, against whom the tribunal passed an award and directed to pay the compensation amount to the claimant. Even though the tribunal has not directed the second respondent/Insurance Company to pay the compensation amount, the learned counsel for the second respondent submits that the tribunal ought not to have awarded any compensation amount at all to the claimant in as much as he has contributed to the accident. In this context the learned counsel appearing for the second respondent relied on the Division Bench decision of this Court rendered in **2018 (2) TN MAC 168 (DB)** to contend that the claimant at the time of accident was neither possessing a valid driving license nor has any document to prove the ownership of the TVS 50 vehicle. Furthermore, it is the claimant who was negligent in driving the TVS 50 vehicle and was instrumental for the accident. Therefore, the learned counsel prayed for dismissal of the appeal.

7. The tribunal has held that merely because the claimant did not possess a valid driving licence or documentary evidence to prove the ownership of the vehicle, his claim cannot be rejected. At the

same time for non-production of the aforesaid documents, the tribunal cannot direct the Insurance company to pay the compensation amount, when there is a violation of policy condition. Accordingly, the tribunal has rightly directed the owner of the vehicle/first respondent alone to pay the compensation amount and dismissed the claim petition against the Insurance Company. In fact the tribunal finds that the claimant has also contributed for the accident and fixed the percentage of contributory negligence on the part of the claimant at 25%.

8. As regards the quantum of compensation, this Court feels that when the Doctor has assessed 40% disability, it is just and proper to award atleast Rs.2,000/- per percentage of disability which would be fair and reasonable compensation especially when claimant has suffered fracture injury in his hip. Therefore, the award passed by the tribunal insofar as it relates to payment of compensation under the head of permanent disability is hereby modified and enhanced to Rs.80,000/-.

9. The award modified by this Court as follows:-

Heads	Sum Awarded by the Tribunal	Sum Modified by this Court
Pain and sufferings	Rs.10,000/-	Rs.10,000/-
Transportation	Rs.5,000	Rs.5,000/-
Extra nourishment	Rs.10,000	Rs.10,000/-
Permanent disability	Rs.40,000	Rs.80,000/-
Medical expenses	Rs.26,650	Rs.26,650/-
Purchase of medicine	Rs.10,000	Rs.10,000
Future pain and sufferings	Rs.10,000	Rs.10,000
Loss of income	Rs.10,000	Rs.10,000
Total	Rs.1,21,650/-	Rs.1,61,650/-
Less 25% towards contributory negligence	-	Rs.1,21,238/-

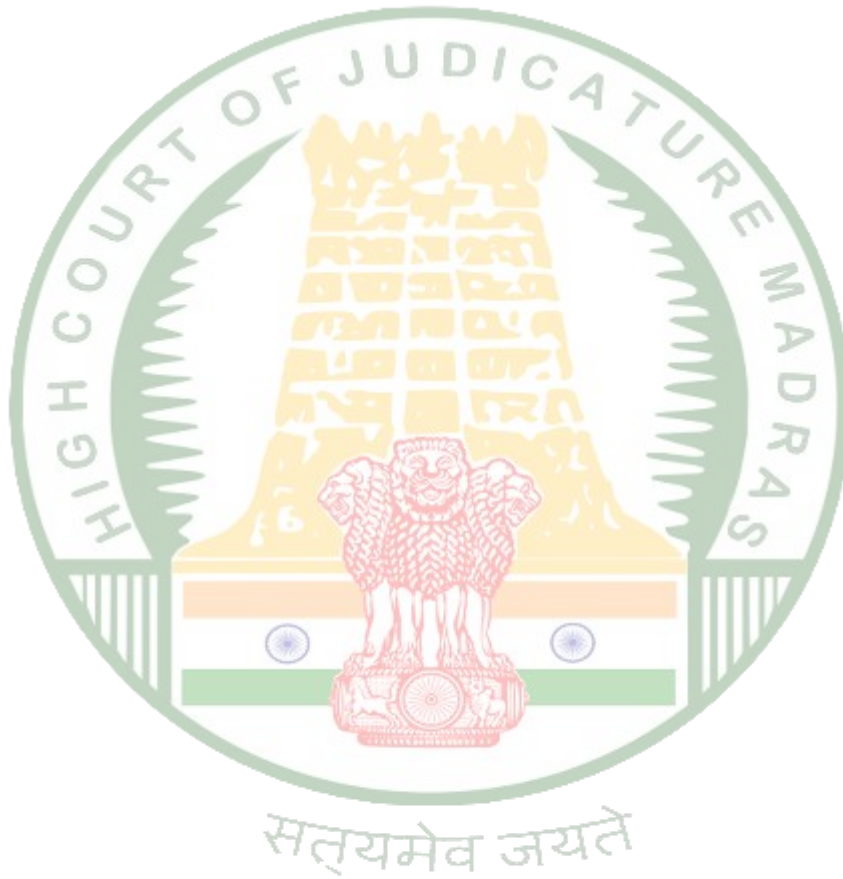
10. In the result, the amount awarded by the tribunal is modified. The first respondent is directed to pay a sum of Rs.1,21,238/- as determined by this Court in this appeal, with interest as directed by the tribunal. The CMA is partly allowed. No costs. Consequently connected miscellaneous petition is closed.

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21.01.2020

Index: Yes/No
AT

To
The Motor Accidents Claims Tribunal (Sub-Court),
Tirupattur, Vellore District.

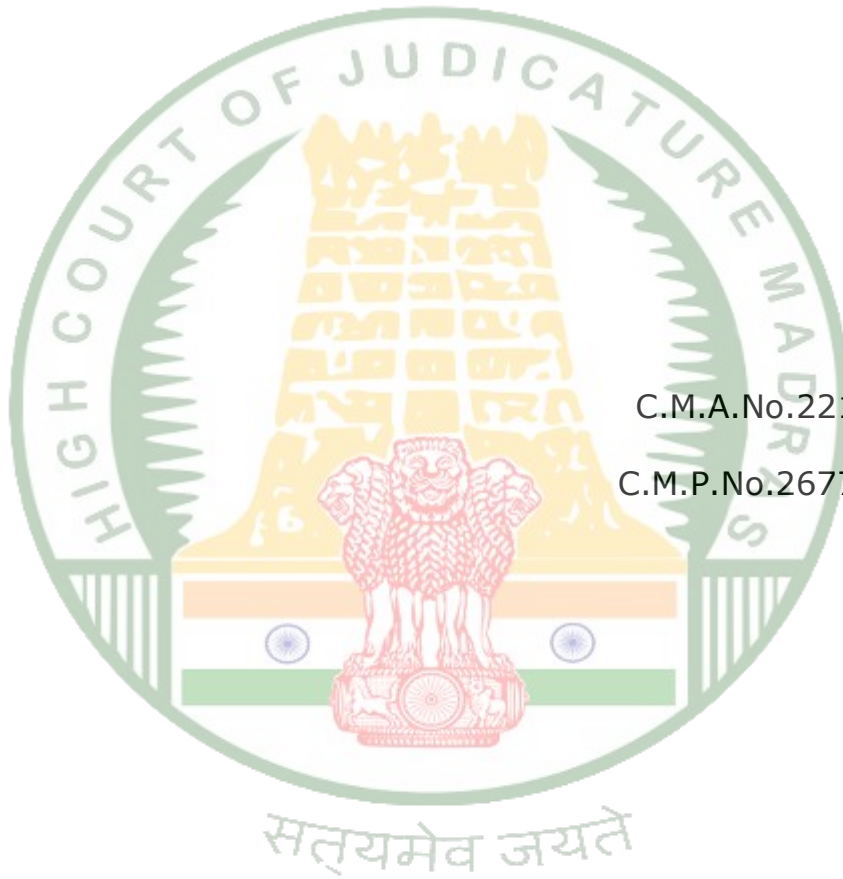


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