

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.167 and 168 of 2013
and
MP No.1 of 2013

1. Abdul Bari
2. The New India Assurance Co. Ltd.
340, Mint Street,
Chennai.

...Appellants
in both C.M.A.s

Kannan

vs.

... Respondent in CMA No.167
of 2013

K. Ravi

... Respondent in CMA No.168
of 2013

Prayer in C.M.A.No.167 of 2013: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the common award and decree dated 27.06.2002 passed in MCOP No.560 of 1996 on the file of the Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court - 5), Coimbatore at Tiruppur.

Prayer in C.M.A.No.167 of 2013: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the common award and decree dated 27.06.2002 passed in MCOP No.562 of 1996 on the file of the Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court - 5), Coimbatore at Tiruppur.

For Appellants in both C.M.A.s : Mr.R.Sivakumar
For respondent in CMA No.167 of 2013 : Insufficient address
For respondent in CMA No.168 of 2013 : No appearance

COMMON JUDGMENT

(These appeals were taken up for hearing through Video conferencing)

These appeals have been filed by the owner and the Insurer of the vehicle challenging the common award dated 27.06.2002 passed by the Motor Accident Claims Tribunal, cum Additional District Court (Fast Track Court - 5), Coimbatore at Tiruppur.

2. Respondent in both CMA Nos.167 and 168 of 2013 sustained injuries on 4.4.1996 as a result of an accident caused by a van, owned by the first appellant and insured with the second appellant.

3. The respective sole respondent in both the appeals preferred separate claims in MCOP Nos. 560 and 562 of 1996 before the Motor Accidents Claims Tribunal cum Additional District Court (Fast Track Court - 5), Coimbatore at Tiruppur seeking compensation of Rs.9,00,000/- each for the injuries sustained by them as a result of the accident. The respondent in CMA No.167 of 2013 was the rider of the motor cycle bearing Registration No.TN-41-Z-1959 and

the respondent in CMA No.168 of 2013 was the pillion rider at the time of the accident.

4. The Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court - 5), Coimbatore at Tiruppur, by its common award dated 27.06.2002 passed in MCOP Nos.560 and 562 of 1996, directed the appellants to pay the respondent in CMA No.167 of 2013 a compensation of Rs. 4,20,421/- and the respondent in CMA No.168 of 2013 a compensation of Rs.5,19,640/- .

5. The details of the compensation awarded by the Tribunal to the respective respondents under the impugned common award are as follows :

MCOP No.560 of 1996 corresponds to CMA No.167 of 2013 – (S.Kannan)

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Permanent disability	3,97,800
Medical expenses	17621
Pain and suffering	5000
Total	4,20,421.80
Rounded off	4,20,421

MCOP No.562 of 1996 corresponds to CMA No.168 of 2013 – (K.Ravi)

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Permanent disability	421200
Medical expenses	90442.3
Pain and suffering	5000
Nutrition	5000
Total	5,19642.30
Rounded off	519640

6. The appellants have challenged the impugned common award on the following grounds :

a) that they are not liable to compensate the respective respondent in both the appeals, as there was negligence on the part of the rider of the two wheeler, who is the respondent in CMA No.167 of 2013 and

b) the quantum of the compensation awarded to the respondent in both the appeals are excessive.

7. Heard Mr.R.Sivakumar, learned counsel for the appellants in both appeals. Despite service of notice on the sole respondent in CMA No.168 of 2013, there is no appearance on his side. Even though notice to the respondent in C.M.A. No.167 of 2013 has not been duly served, the notice to the said

respondent is dispensed with by this Court, in view of the fact that this Court is going to confirm the common award.

8. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

9. Before the Tribunal, the respective respondent in both the Civil Miscellaneous Appeals, who are the claimants in both MCOPs, i.e. No.560 and 562 of 1996 have filed 36 documents altogether which were marked as Exs.P1 to P36 and six witnesses were examined on their side. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

10. Insofar as the first contention raised by the appellants is concerned, the same is rejected by this Court on the following grounds :

The FIR (Ex.P1) has been registered only against the driver of the van insured with the second appellant. No contra evidence has been produced by the appellants before the Tribunal to disprove the contents of the FIR (Ex.P1) as well as the contention of the respective respondent in both the appeals that only due to the rash and negligent driving by the driver of the van, the accident had happened. Hence, it is conclusively established that only due to the rash

and negligent driving by the driver of the van, the accident had happened. The Tribunal has rightly appreciated the evidence available on record and has rightly held that the appellants are liable to pay the compensation to the respective respondent in both the appeals, based on preponderance of probabilities, the Tribunal has rightly appreciated the evidence.

11. Insofar as the second contention raised by the appellants with regard to the quantum of compensation is concerned, the same is also been rejected by this Court on the following grounds :-

The respective respondent in both CMAs have pleaded in their respective claim petitions as under :-

The respondent in CMA No.167 of 2013 has pleaded in his claim petition that he was a Two wheeler Mechanic, earning Rs.3,000/-p.m. and was aged 30 years at the time of the accident. The respondent in CMA No.168 of 2013 has pleaded in his claim petition that he was working as a Receptionist in M/s.P.V.S.Boarding & Lodging, Tirppur, earning of Rs.4,000/-p.m. and was aged 28 years at the time of the accident. However, no documentary evidence has been produced by the appellants before the Tribunal to disprove the age, monthly income of the claimants. Therefore, the Tribunal has accepted the same and fixed the notional monthly income of the claimant as Rs.3,000/- for the

respondent in CMA No.167 of 2013 and as Rs.4,000/- for the respondent in CMA No.168 of 2013. This Court is in agreement with the said assessment of the notional monthly income of the respective respondent and the said assessment cannot be considered to be excessive as alleged by the Appellants.

12. The respondent in CMA.No.167 of 2013 sustained the following injuries namely (a) grievous injuries at right toe, (b) right leg, (c) right thigh and (d) injuries all over the body and the respondent in CMA.No.168 of 2013 sustained the following injuries namely (a) fracture at right leg, (b) right foot and (c) injuries all over the body as a result of the accident.

13. Before the Tribunal, the Doctors, who examined the claimants have issued the disability certificates (Ex.P35 and ExP36) and have also been examined as witnesses before the Tribunal as PW3 and PW5. They have assessed the disability of the respective claimants at 65%. Considering the nature of injuries sustained by the respective claimants, the Tribunal has rightly accepted the disability certificate and has rightly assessed the disability of the claimants at 65%. The Tribunal has rightly adopted the multiplier method. After giving due consideration to the age as well as the nature of injuries sustained by the respective respondent in both the appeals, this Court is of the

considered view that the compensation awarded under the head "permanent disability" cannot be considered to be excessive as alleged by the appellants

14. Insofar as the compensation awarded by the Tribunal under the head medical expenses is concerned, the same is correct, which is supported by the medical bills produced by the respective respondent in both the appeals, which were marked as Exhibits before the Tribunal.

15. The Tribunal has given due consideration to the injuries sustained by the respective respondent in both the appeals and has granted compensation to both of them towards pain and suffering which is a correct assessment.

16. The Tribunal has given due consideration to the age and avocation of the respondent in CMA No.168 of 2013 and has rightly awarded a compensation of Rs.3,000/- towards extra nourishment, which cannot be considered to be excessive as alleged by the appellants.

17. The accident happened in the year 1996. After giving due consideration to the nature of injuries sustained by the respective respondent in both the appeals as well as the year of the accident, the overall compensation awarded by the Tribunal under the impugned common award is not excessive as

alleged by the appellants. Accordingly, this Court confirms the common award passed by the Tribunal.

18. For the foregoing reasons this Court does not find any infirmity in the findings of the Tribunal. Therefore, there is no merit in these appeals and accordingly, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19. The appellants in both these appeals are directed to deposit the entire amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP Nos.560 & 562 of 1996, on the file of the Motor Accident Claims Tribunal cum Additional District Court (Fast Track Court - 5), Coimbatore at Tiruppur, within a period of four weeks from the date of receipt of a copy of this Judgment respectively. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondent in both these appeals, through RTGS, within a period of two weeks thereafter.

30.09.2020

Index : Yes / No

Internet : Yes / No

Speaking order / Non speaking order

vsi2

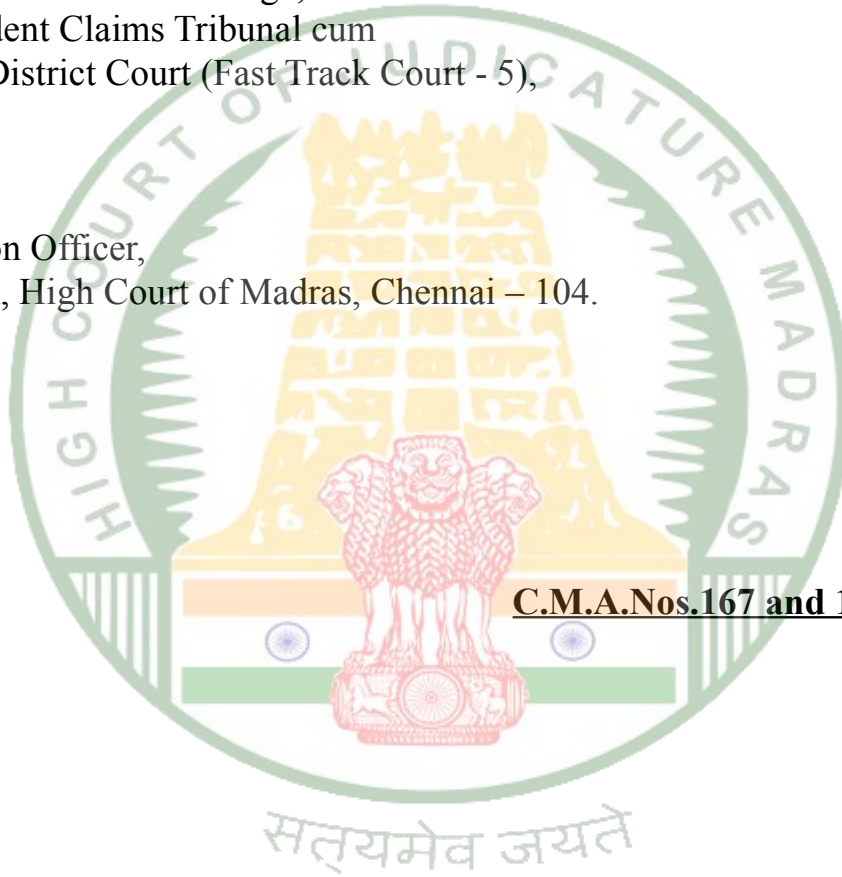
ABDUL QUDDHOSE, J.

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal cum
Additional District Court (Fast Track Court - 5),
Coimbatore
Tiruppur.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai – 104.



C.M.A.Nos.167 and 168 of 2013

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