

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1114 of 2016

Mohan

... Appellant/Petitioner

/versus/

1.Thirumalai

2.The Branch Manager,

United India Insurance Co. Ltd.,

P.B.No.172, No.261 J.N.Street,

Puducherry.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act to set aside the award and decree dated 13.03.2015 in M.C.O.P.No.482 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Puducherry by enhancing the award amount.

For Appellant : No Appearance

For R1 : No appearance

For R2 : Mr.M.J.Vijayaraghavan

J U D G M E N T

(The case has been heard through video conference)

This appeal arising from the Motor Accident Claims Tribunal (III Additional Judge) Puducherry is preferred by the claimant and it was listed for final hearing on 28.07.2020 and 22.09.2020. In both the hearings, there was no representation on either side. Hence, this Court on perusing the records, passes the following order.

2.On 08.02.2010, the appellant herein along with his friend Jayabalasubramanian while travelling in a two wheeler Hero Honda Glamour bearing Reg.No.PY01-AQ-3661, near Thirubhuvanai bus stand on Pondy-Villupuram Main Road dashed against the motor

cycle viz., Hero Honda Passion bearing Reg.No.PT-01-AV-4014 driven by the first respondent. In the said collusion, the appellant, who was the pillion rider, sustained injury and he was treated as inpatient in the hospital for 6 days. The claim petition seeking Rs.10,00,000/- as compensation was filed by the injured appellant against the offending vehicle owner and its insurer.

3.The Insurance Company/2nd respondent herein contested the claim on the ground that the accident has occurred due to the negligence and rashness of the rider of Hero Honda Glamour Jayabalasubramanian in which the claimant was travelling on the pillion. There was no fault on the part of the first respondent and therefore, the 2nd respondent/Insurance Company is not liable to compensate the injured. The earning capacity of the claimant and the compensation sought for the injury were also denied.

4. Before the Tribunal, the claimant was examined as PW-1 and one Doctor Mr.D.Sivaradje was examined as PW-2. Eight exhibits were marked. After deducting 50% towards contributory negligence the Tribunal has awarded a sum of Rs.72,300/-. Challenging that there was no contribution on the part of the claimant vehicle rider and the award under non-conventional heads are very less, the present appeal is filed.

5.On perusing the records, this Court finds that it is a head on collusion between the 2 two wheelers. The claimant himself has admitted that both the two wheelers colluded face to face. While so, the claimant has not impleaded the owner and insurer of the two wheeler in which he was travelling. Further, there is no document produced by the claimant that Jayabalasubramanian, the rider of two wheeler in which the claimant was travelling had a valid driving license. Though there was no document to show that the deceased had income through his business, the Tribunal has awarded Rs.12,000/- under "head of loss of income during the treatment period." The disability certificate, indicates the claimant in the accident sustained injury on the right temporal region and at parietal EDH. The Tribunal has fixed 30% disability though there was no fracture and has awarded Rs.90,000/- towards partial temporary disability.

6.On cumulative consideration of the facts and evidence, this Court finds that the Tribunal has rightly fixed contributory negligence 50% being head on collusion between the two two wheelers and has awarded Rs.72,300/- payable by the Insurance Company. This Court finds no error in the said award.

7.In the result, this Civil Miscellaneous Appeal is dismissed. The judgment and decree passed by the Motor Accident

Claims Tribunal III Additional District Judge, Pondicherry in M.C.O.P.No.482 of 2010, dated 13.03.2015 is confirmed. No order as to costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

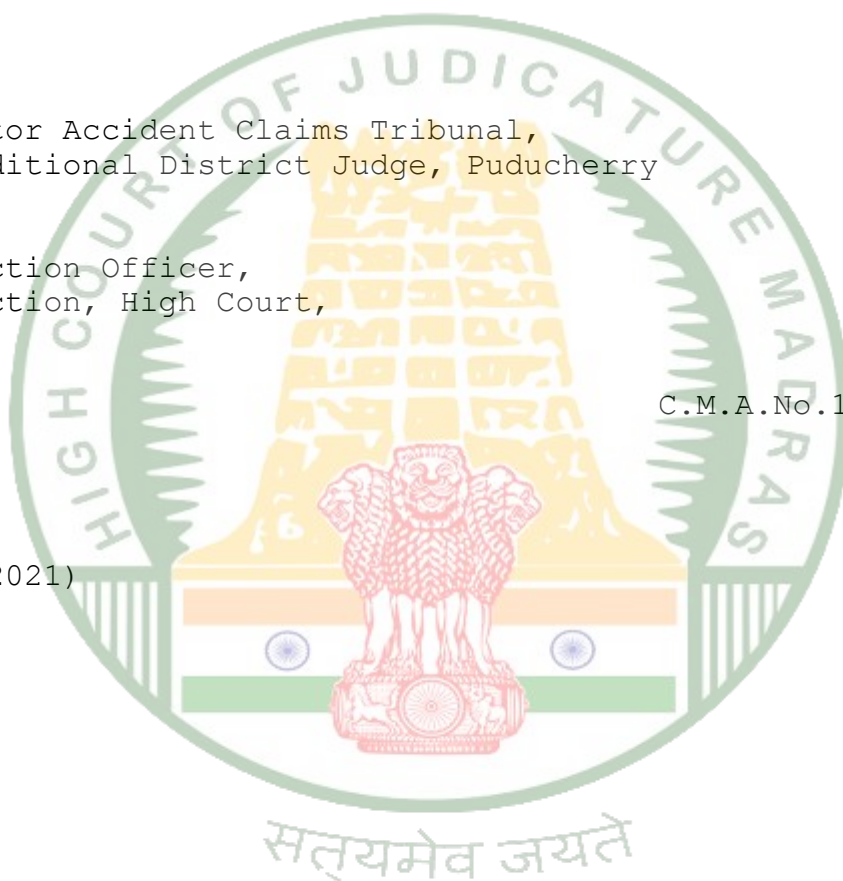
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To:

1. The Motor Accident Claims Tribunal,
III Additional District Judge, Puducherry
2. The Section Officer,
V.R.Section, High Court,
Madras.

C.M.A.No.1114 of 2016

SPD (CO)
GN (27/04/2021)



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