

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1736 of 2012
and
M.P.No.2 of 2012

The Branch Manager,
ICICI Bank Ltd.,
No.3/50, K.M.P. Shopping Arcade,
Bangalore Main road, Salem ...Appellant /2nd Respondent

Vs

1.A. Gurunathan1st Respondent/Petitioner

2.D. Eswaran2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the Judgment and decree dated 15.07.2010 made in MCOP No.310 of 2005 on the file of the Motor Accident claims Tribunal (Chief Judicial Magistrate), Erode.

For Appellant : Mr. T. Muruganantham

For Respondent-1 : Mr. M.Guruprasad

For Respondent-2 : Mrs. S.P. Aarthi

JUDGMENT

This appeal has been preferred against the Judgment and decree dated 15.07.2010 made in MCOP No.310 of 2005 on the file of the Motor Accident claims Tribunal (Chief Judicial Magistrate), Erode.

2.The case in brief, is as follows:

On 13.01.2005 at about 11:30 p.m when the first respondent/claimant herein was riding his bi-cycle in Erode to Poondurai Road a motor cycle bearing Registration No. TN-33-AP-1417 came in the opposite direction and dashed against the bi-cycle of the first respondent. As a result of which, the claimant herein was thrown away from his bi-cycle and sustained

fracture at his Nasal Bone(Face bone), Maxillary bone and Frontal bone and lacerated injuries all over the body. Hence, the first respondent herein filed a claim petition before the Tribunal claiming a sum of Rs.1,50,000/- as compensation. On a consideration of the materials and evidence available on record, the Tribunal has arrived at the total compensation of Rs.83,460/- with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit.

3.Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant contended that the appellant is only a financier on Hypothecation Agreement and the possession of the vehicle is with the owner and no specific agreement for the payment of Insurance by this appellant. Hence, they are not liable to pay any compensation.

5. The learned counsel for the first respondent submitted that the rider of the two wheeler drove the vehicle without adhering to the traffic rules hence the accident took place. He further submitted that the fault has been committed on the part of the rider of the two wheeler and due to the injuries sustained in the accident he was unable to continue his work as before and prays to enhance the compensation.

6.The leaned counsel for the second respondent submitted that the award passed by the Tribunal is very high when compared to the injuries sustained by the claimant. He also states that the injuries stated in the claim petition by the injured were branded as permanent disability, which was concocted for the purpose of claiming huge sum.

7.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

8.Before the Tribunal, the injured was examined as P.W.1 who has deposed that the rider of the two wheeler is the tort feisor for the accident. P.W-2/Dr.Ramamurthy has examined the injured and assessed the disability at 15% and it was considered by the Tribunal while arriving calculation under the head pain and sufferings. R.W.1/manager of the appellant's Bank deposed that Rs.29,000/- was granted as loan to the first respondent for purchase of a two wheeler and he was not aware whether the

vehicle is insured or not. The Tribunal has observed that as per the terms of the agreement the appellant had agreed to insure the vehicle and renew the same from time to time till the entire loan is cleared and to collect the premium from the borrower/first respondent and have omitted to do so due to the negligence on their part and they cannot be exonerated from the liability. Hence, the tribunal has fastened the liability on the part of the appellant/Bank which does not require any interference by this Court. The findings rendered by the Tribunal are based on the materials and evidence produced before it, which is proper and reasonable.

9. With regard to the quantum the Tribunal has considered Ex.P16/Disability Certificate which reveals that the first respondent had sustained 15% disability and determined Rs.2,000/- per percentage and quantified Rs.30,000/- towards the head Permanent Disability. Considering Exs.P.7 to Ex.P.12, the Tribunal has awarded Rs. 5,000/-, Rs.3,000/-, Rs.2,000 and Rs.43,460/- towards Pain and suffering, Extra Nourishment, Transportation and Medical Expenses Respectively. The findings rendered on quantum by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence. Hence, this Court is of the view that interference on quantum is uncalled for.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant and the Second Respondent are directed to deposit the award amount jointly and severally as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. Hence on such deposit being made, the first respondent is directed to withdraw the award amount by making proper application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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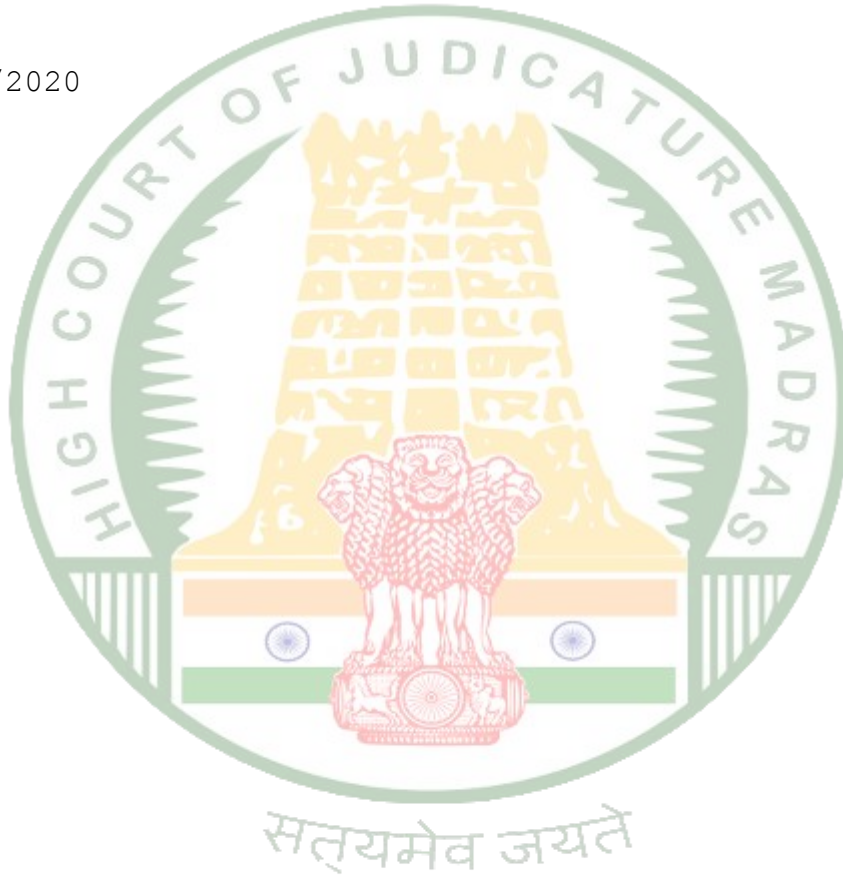
1. The Motor Accidents Claims Tribunal
Judicial Magistrate, Erode.

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

+1cc to Mr.M.Guruprasad, Advocate SR.10535

C.M.A.No.1736 of 2012
and
M.P.No.1 of 2012

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srg 16/12/2020



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