

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2810 of 2011

1. Thirumalaisamy (Died)

2. T.Nirmala

3. T.Karthick

4. T.Senthilraja (Minor)

Rep. by his mother & guardian T.Nirmala

5. Palaniamma

(Appellants 2 to 5 brought on records as

L.Rs. of the deceased sole appellant

viz., Thirumalaisamy vide Court order

dated 03.01.2020 made in M.P.Nos.

1, 2 & 3 of 2012 in C.M.A.No.2810/2011)

.... Appellants/Claimants in
MCOP

Vs.

1. S.Karuppusamy

2. Royal Sundaram Alliance Insurance Co. Ltd.,

4-A, Thirumalai Towers,

No.723, Avinasi Road,

Coimbatore - 641 018.

.... Respondents/1st and 2nd
Respondent in MCOP

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 13.03.2008 made in M.C.O.P.No.439 of 2006 on the file of Motor Accidents Claims Tribunal cum Additional District Sessions Judge, Fast Track Court No.III, Coimbatore in granting compensation Rs.3,39,000/- as against the claim of Rs.5,00,000/- and in exonerating the 2nd respondent from its liability.

For Appellants : Mrs.C.R.Rukmani
For R1 : Mrs.Lessi Saravanan
For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 13.03.2008 made in M.C.O.P.No.439 of 2006 on the file of Motor Accidents Claims Tribunal cum Additional District Sessions Judge, Fast Track Court No.III, Coimbatore.

2. The appellant is the claimant in M.C.O.P.No.439 of 2006 on the file of Motor Accidents Claims Tribunal cum Additional District Sessions Judge, Fast Track Court No.III, Coimbatore. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.07.2004.

3. The case of the petitioner is that on 25.07.2004 at about 6.30 p.m., he was travelling in a Minidor Auto bearing Reg.No.TN-37-AC-6937 and proceeded towards Ramanathapuram Kamatchiamman Koil Street to Dr.Munusamy Nagar Road. While passing near Kamatchiamman Koil, the driver of the Minidor Auto drove the vehicle rashly and negligently and lost his balance and the auto capsized on the road. Due to the accident the petitioner sustained grievous injuries all over his body. Prior to the accident, the petitioner was hale and healthy and he is aged about 40 years. He was doing the business of fabrication of panel boards and his monthly income was Rs.6,000/-. In spite of treatment, the petitioner becomes permanently disabled and not able to do his routine as earlier. Hence the petitioner filed a petition before the Additional District Sessions Judge (Motor Accidents Claims Tribunal), Fast Track Court No.III, Coimbatore claiming a sum of Rs.5,00,000/- as compensation from the respondents.

4. Denying the allegations, the second respondent/Insurance Company herein has filed a counter affidavit stating that the existence of Policy of insurance on the date of accident to the alleged goods vehicle Minidor Auto bearing Reg.No.TN-37-AC-6937 is admitted. Moreover, the age, income, and employment of the deceased are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the petitioner, the petitioner himself was examined as P.W.1 and marked certain documents as Exs.P1 to P8. On the side of the respondents one Mr.Vaitheeswaran was examined as R.W.1 and marked Ex.D1.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the first respondent driver and directed the first respondent to pay a sum of Rs.3,39,000/- as compensation to the petitioners/appellants herein. Not being satisfied with the amount awarded by the Tribunal, the petitioner/appellant herein has come out with the present appeal seeking enhancement of compensation.

7. Heard Mrs.C.R.Rukmani, learned counsel appearing for the appellants/claimants and Mrs.Lessi Saravanan, learned counsel appearing for the first respondent and Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent.

8. From the F.I.R., it is seen that the petitioner travelled with the first respondent in a Minidor Auto bearing Reg.No.TN-37-AC-6937 to bring the sound service tents and that the accident occurred due to the rash and negligent driving of the driver of the vehicle. In the accident the petitioner has sustained injuries such as fracture in left fore arm and left hand wrist and admitted in trauma ward in C.M.C. hospital, Coimbatore and thereafter undergone surgery and his left fore arm has been removed. On perusal of the type set of papers regarding the premium of Insurance Policy, which was taken from 15.06.2004 to 14.06.2005, the date of accident was 25.07.2004. Hence, there is a coverage for the said policy. In page 2 of the type set, the Premium Computation Table would clearly shows that under the head NFPP-other than employees, Rs.75/- has been paid and total amount of Rs.4,265/- has been paid as premium on that day while taking the policy.

9. The tribunal has held that since the appellant/claimant was a gratuitous passenger in the vehicle bearing Registration No.TN-37-AC- 6937, the second respondent/Insurance Company is not liable to pay the compensation. The Tribunal without considering the materials available on record, particularly the policy schedule, fixed the liability on the first respondent/owner of the vehicle and exonerated the second respondent/Insurance Company.

10. After going through the materials available on record, which has been filed by way of type set by the appellant herein, it is clear that the Non Fare Paying Passengers amount has been paid as premium and hence this Court is of the view that the erroneous finding of the Court below has to be set aside and the liability has to be fastened on the second respondent/Insurance Company and hence the first respondent/owner of the vehicle is exonerated from the same. Regarding the quantum of compensation,

the learned counsel for the appellant submitted that the appellant's fore arm has been amputated and he has become permanently disabled. According to the doctor, who treated him, the percentage of the disability sustained by him is 60% and the amount to be awarded for the same.

11. This Court is inclined to enhance the award amounts under the heads Pain and Suffering, Extra Nourishment and Attendant charges. Accordingly, these heads are enhanced to Rs.20,000/-, Rs.5,000/- and Rs.5,000/-, respectively. The Tribunal has not awarded any amount towards Transport charges. A sum of Rs.5,000/- can be awarded under the said head.

12. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	10,000/-	20,000/-	Enhanced
2.	Extra Nourishment	2,000/-	5,000/-	Enhanced
3.	Attendant charges	3,000/-	5,000/-	Enhanced
4.	Permanent Disability	3,24,000/-	3,24,000/-	Confirmed
5.	Transport charges	-	5,000/-	Granted
	Total	Rs.3,39,000/-	Rs.3,59,000/-	-

13. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,39,000/- is hereby enhanced to Rs.3,59,000/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw

the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsi

To

1.The Additional District Sessions Judge
(Motor Accidents Claims Tribunal),
Fast Track Court No.III, Coimbatore .

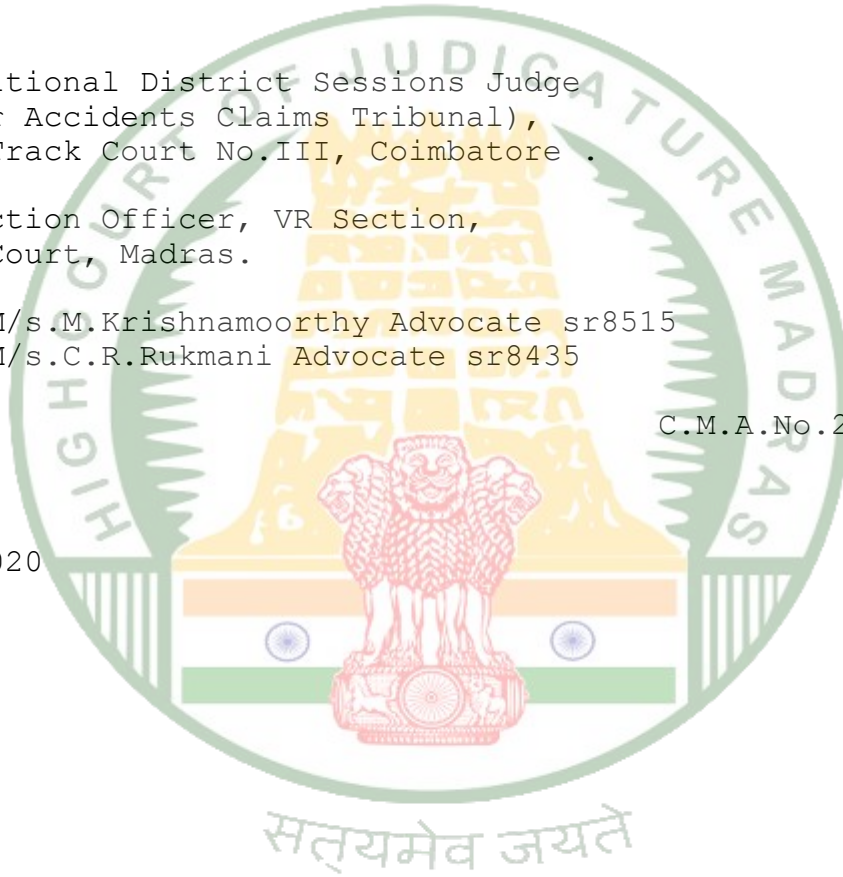
2. The Section Officer, VR Section,
High Court, Madras.

+1 cc to M/s.M.Krishnamoorthy Advocate sr8515

+1 cc to M/s.C.R.Rukmani Advocate sr8435

C.M.A.No.2810 of 2011

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