

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2809 and 2810 of 2012
and M.P.Nos.1 and 1 of 2012

The New India Assurance Company Ltd.,
No.826, Anna Salai,
Chennai - 2

... Appellant in both the appeals

Vs

1. A.Ayyappan ... 1st Respondent in CMA No.2809 of 2012
1. C.Pattabiraman ... 1st Respondent in CMA No.2810 of 2012
2. J.Kuttiammal ... 2nd respondent in both the appeals.

Prayer:

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act to set aside the Judgment and Decree dated 04.01.2012 made in M.C.O.P.Nos.2211 and 2217 of 2007 on the file of Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant : Mr. Elveera Ravindran

For Respondents : Mr.R.Nalliappan for
M/s C&K Law Firm for R1
R2-served - NA

COMMON JUDGMENT

Since the issues involved in both the cases are interlinked, they are taken up together and a common judgment is being passed.

2. The claimants in the M.C.O.P.Nos.2211 and 2217 of 2007 are the 1st respondent in the appeals herein. The case of the claimants in M.C.O.P.Nos.2211 and 2217 of 2007 is that on 12.02.2007 around 14.45 hrs, 1st respondent in CMA No.2809 of 2012 as a pillion rider and 1st respondent in CMA No.2810 of 2012 as a rider were travelling in the motor cycle bearing registration No.TN 22 AT 8919 along 200 feet road, Pallikaranai, at that time, a car bearing registration no. TN 22 AM 7807 came from behind in a rash and negligent manner dashed against the motor cycle and the claimants have sustained grievous injuries due to the said impact and after taking treatment, had claimed compensation of Rs.3,00,000/- and Rs.1,50,000/- respectively.

3. The appellant / Insurance company filed a counter statement denying all the allegations in the claim petitions. They contended that the driver of the motor cycle had driven the said vehicle in a rash and negligent manner and they are also guilty of contributory negligence and submitted

that the same should be apportioned with the greater percentage on the rider of the motor cycle bearing the Regn.No.TN 22 AT 8919, as the said vehicle alone was negligent and has caused the accident.

4. The appellant had further contended that the claimants have not produced any proper proof for their age and avocation, as they claim Rs.5,000/- per month as income for the pillion rider and Rs.30,000/- per month for the person, who was riding the motor bike. When there was no disability, the compensation claimed by the claimants is frivolous and sought for dismissal of the claim petition.

5. The Tribunal after considering the facts and circumstances had come to the conclusion and awarded Rs.1,56,000/- for the pillion rider and Rs.20,000/- for the person, who was riding the motor bike, (as he sustained only a minor injuries) along with 7.5% per annum from the date of filing of the petition till deposit.

6. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

7. It is the case of the appellant that the Tribunal has erroneously held that the car bearing registration no.TN 22 AM 7807 was involved in the alleged accident which was said to have been occurred on 12.02.2007 without any basis and the said car was not involved in the particular accident. The counsel also contended that in Ex.P.4, FIR it is stated that, TATA 407 vehicle, a green colour vehicle had caused the accident and the same was lodged based on the complaint given by one Kanthan and the present vehicle TN-22-AM-7807 was not a green colour. As there is a discrepancy regarding the particulars of the car in the FIR and the vehicle involved, the Tribunal ought not to have granted such huge compensation and ought to have dismissed the claim, as the claimants have not proved the case beyond doubt.

8. That apart, the learned counsel for the appellant also further contended that their investigation officer has clearly brought forth the statement from the driver, who has submitted that out of humanitarian grounds, he went and helped the persons who were injured in the accident and had admitted them in the hospital. The Tribunal after considering the materials, i.e, on the side of the claimants, viz., Ex.P.1 to P.8 and three witnesses, P.W.1 to P.W.3 and five witnesses on the side of the

respondents, R.W.1 to R.W.5 and the documents Ex.R.1 to R.5, has allowed the claim petition, which is being challenged by the Insurance Company before this Court.

9. On going through the materials available on record and hearing the learned counsel on both sides, it is seen that evidence of P.W.1 and P.W.2 corroborates with Ex.P.4, FIR Copy. It is seen from the Investigation officer's report, that the officer, who had recorded the Crime No.566 of 2007, was not examined, as he was placed under suspension. The onus is on the insurance company to disprove the case of the claimants, as such, it is seen from the records that the claimants, though through their oral and documentary evidences have proved that the accident had taken place only due to the rash and negligent driving of the vehicle driven by the driver of TN 22 AM 7807, but the appellant/Insurance Company had denied that the said vehicle was not involved in the accident, however, did not produce any piece of evidence to the effect and in furtherance of their statement.

10. It is also seen from the records that the owner of the vehicle have remained exparte and they did not appear and it is also stated that the vehicle no.TATA Indica was involved in the said accident. The driver of the

vehicle even though stated that only out of humanitarian grounds, he has admitted the injured in hospital, the same was not corroborated by any other independent witness. It is also clear that one of the suggestions put before the concerned claimants whether they have changed the colour of the car, there was no proper evidence produced to show that the vehicle involved is not a green coloured car.

11. The Investigator of the Insurance Company has marked the investigation report as Ex.R.3 and the said investigating report do not have any seal and signature of the said person, who has given the statement. That being the case, the Tribunal has rightly come to the conclusion that the appellant has not proved the case beyond doubt.

12. Considering the documentary and oral evidence, the Tribunal has rightly come to the conclusion that the vehicle bearing regn. no.TN-22-AM-7807 was the cause for the accident and this Court is not inclined to interfere with the award passed by the Tribunal in M.C.O.P.Nos.2211 and 2217 of 2007 dated 04.01.2012. The claimant, who was himself examined as witnesses, has proved that he was earning Rs.5,000/- at the time of accident and working as a Machine operator in Sakthi Rubber Products

and hence taking into account of the job, the court below has taken notional income and accordingly, awarded a reasonable amount as compensation, which this Court is not inclined to interfere with. On the other heads also the Tribunal has fixed the reasonable amount as compensation and therefore the same amount is confirmed.

With the above said observations and directions, the Judgment and Decree made in M.C.O.P.Nos.2211 and 2217 of 2007 dated 04.01.2012 on the file of Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai is confirmed and the present Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

02.06.2020

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment

ssd

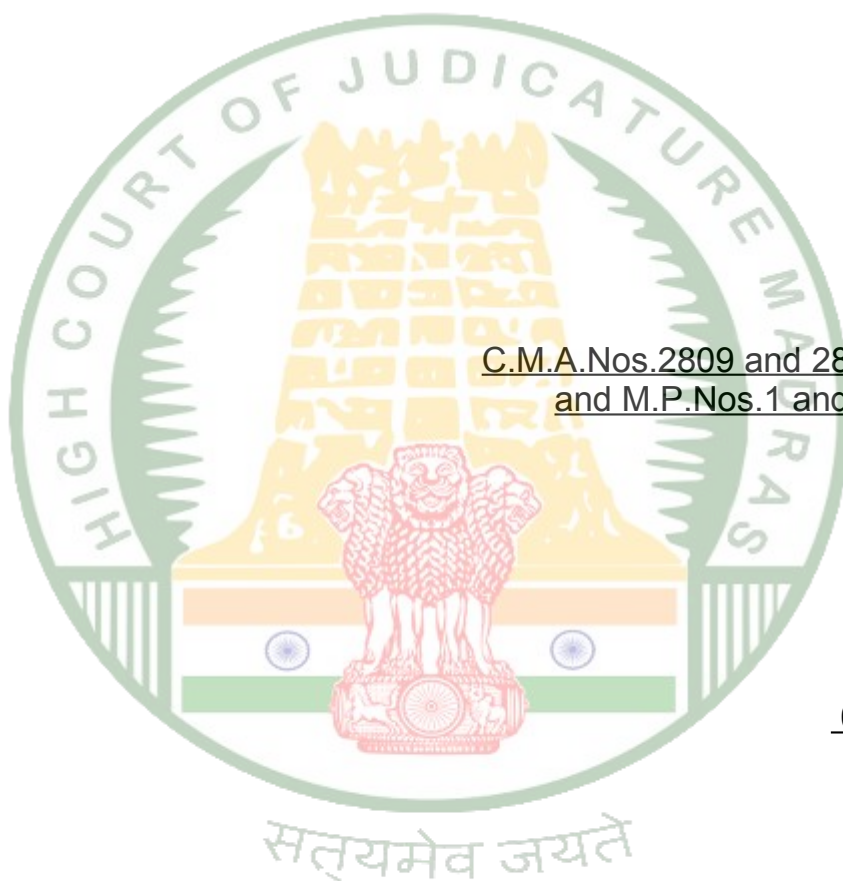
To

1. The Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai.
2. The Section Officer,
VR Section,
Madras High Court, Chennai

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V.BHAVANI SUBBAROYAN, J.,

ssd



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