

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2416 of 2013

and

M.P.No.1 of 2013

The National Insurance Co. Ltd.,
122/165, Nethaji Road,
Manjakuppam, Cuddalore.

... Appellant/2nd Respondent

Vs.

1.A.P.Kumar

2.P.Kalaimani

.. Respondents/Petitioner/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 20.04.2012 made in M.A.C.T.O.P.No.2961 of 2008 on the file of Motor Accident Claims Tribunal, (First Additional Subordinate Judge, Cuddalore).

For Appellant : Mr.S.Vadivel

For Respondents: Mr.D.S.Thirumavalavan for R1

No appearance for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 20.04.2012 made in M.A.C.T.O.P.No.2961 of 2010, on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Cuddalore (First Additional Subordinate Judge, Cuddalore).

2. The appellant-Insurance Company is the third respondent in M.C.O.P.No.2961 of 2010, on the file of Motor Accidents Claims Tribunal, Subordinate Judge, Cuddalore (First Additional Subordinate Judge, Cuddalore). The first respondent had filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him, in the accident that took place on 16.03.2008.

3.The case of the appellant is that on 16.03.2008, at about 08.45 pm., on the Gundu Salai Main Road, opposite Pillaiyar Koil, the respondent's vehicle bearing Regn.No.TN-31-C-7729 Hero

Honda Splendor was driven in a rash and negligent manner suddenly applied the brake, thereby the first respondent was thrown away from the bike and he sustained multiple grievous injuries.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bike, the second respondent herein, and directed the appellant-Insurance Company to pay a sum of Rs.1,55,810/- as compensation to the first respondent. Challenging the said award dated 20.04.2012 made in M.C.O.P.No.2961 of 2010, the appellant-Insurance Company has come out with the present appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

6. From the materials on record, it is seen that the first respondent has contended that the accident occurred only due to rash and negligent driving by the driver of the bike. The appellant did not prove that the accident has occurred only due to the negligence of the injured. In the absence of any such material evidence, the Tribunal, after considering the evidence of P.W.2 and Ex.P1/copy of F.I.R., held that the accident occurred only due to rash and negligent driving by the driver of the bike.

7. It is seen that the injured was working as a lorry driver and was earning a sum of Rs.10,000/- per month, but, there is no proof for the same and the Court below has fixed Rs.2,000/- per month as his income. It is true that if the first respondent has not sustained grievous injuries in the accident, it would have certainly not prevented him to attend his work for a period of at least 2 months and in view of the same, a sum of Rs.4,000/- is granted for 'loss of earning'. Analysing the nature of injury and also the period, which prevented the claimant from attending his work, this Court is of the view that the amount awarded by the Tribunal is just and reasonable and the same is confirmed hereby. Further, the learned tribunal awarded a sum of Rs.30,000/-, Rs.29,690/- Rs.10,000/-, and Rs.25,000/- towards "Pain and sufferings", "Medical bills", "Transportation" and "Extra-nourishment", which are also very just and reasonable and need not be altered. The Tribunal has awarded a sum of Rs.57,120/- (2,000 X 12 X 17 X 14/100) towards "disability" the same is hereby confirmed. The compensation awarded by the Court below are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	57,120/-	57,120/-	Confirmed
2.	Pain and Sufferings	30,000/-	30,000/-	Confirmed
3.	Medical Bills	29,690/-	29,690/-	Confirmed
4.	Extra-nourishment	25,000/-	25,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of earnings	4,000/-	4,000/-	Confirmed
Total		Rs.1,55,8100/-	Rs.1,55,810/-	Confirmed

8. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,55,810/- awarded by the Tribunal towards compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.A.C.T.O.P.No.2961 of 2008. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount, along with interest, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar
//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
1st Additional Subordinate Judge,
Cuddalore.

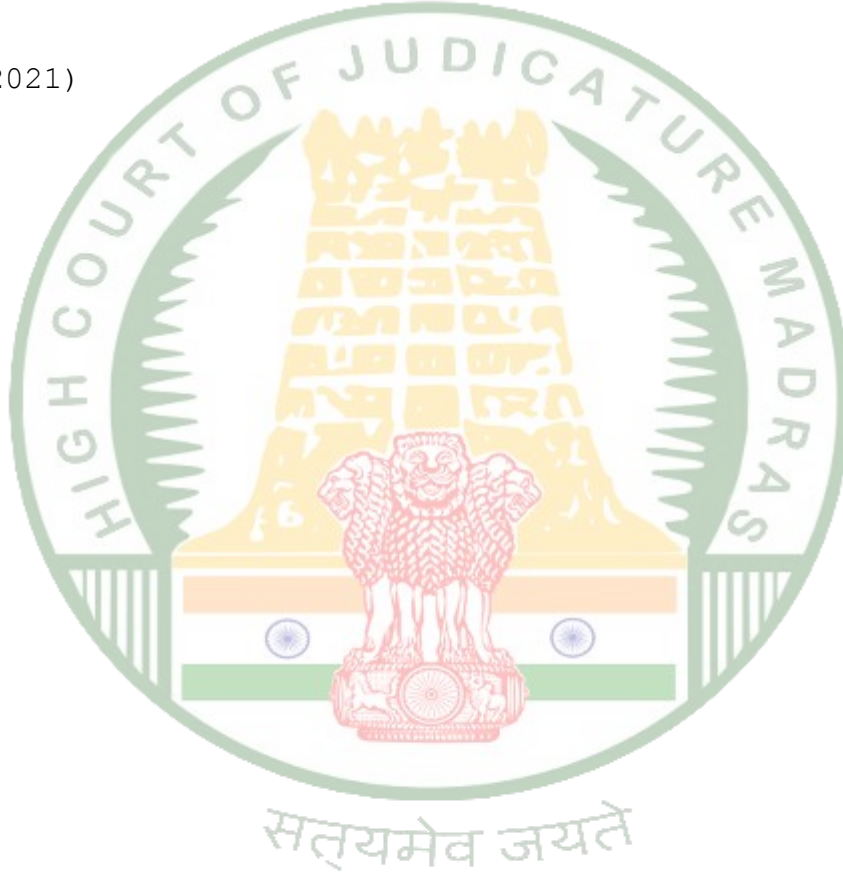
Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+2cc to Mr.D.S.Thirumavalavan, Advocate, S.R.No. 16582, 17108
+1cc to Mr.S.Vadivel, Advocate, S.R.No. 15985

C.M.A.No.2416 of 2013
and
M.P.No.1 of 2013

NMI (CO)
GN(20/01/2021)



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