

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.3671 and 3672 of 2013

1. D.Karthikeyan ... Appellant in C.M.A.No.3671 of 2013

2. K. Karthick ... Appellant in C.M.A.No.3672 of 2013

Vs.

1.T. Tamilarasan
(R1 was set exparte in the trial court)

2.Bajaj Allianz General Insurance Co. Ltd.,
Prince Towers,
No.25/26, College Road,
Nungambakkam, Chennai -34. ... Respondents/
Respondents in both the appeals

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 15.07.2013 made in M.A.C.T.O.P.Nos. 1433 and 1434 of 2009 on the file of the III Judge, Motor Accidents Claims Tribunal (small Causes Court), Chennai.

(For both appeals)

For Appellants : Mr.C. Munuswamy

For Respondent-2 : Mr.S. Arun Kumar

For R1 - : Ex-parte

WEB COPY

COMMON JUDGMENT

Since, both the appeals are interlinked, they are taken up together and a common order is passed.

2. These Civil Miscellaneous Appeals have been filed against the Judgment and Decree dated 15.07.2013 made in M.A.C.T.O.P.Nos. 1433 and 1434 of 2009 on the file of the learned III Judge, Motor Accidents Claims Tribunal (small Causes Court), Chennai.

3. In both the appeals, the appellants are claimants, first and second respondents are the owner and insurer of the vehicle respectively

4. The case of the claimants/appellants is that on 29.04.2009 at about 23.50 hours, while they were proceeding in a motor cycle

bearing Registration No. TN-49-R-2824 along 7th Avenue, Ashok Nagar, a car bearing Registration No. TN-09-AT-8652 which was driven by its driver in a rash and negligent manner, dashed against the motor cycle of the claimants. The accident occurred due to the rash and negligent driving of driver of the car. Hence, the appellants herein filed separate claim petitions before the Tribunal seeking Rs.3,00,000/- and Rs.7,00,000/- respectively as compensation from the respondents.

5. Per Contra, the 2nd respondent has filed a detailed counter before the Tribunal denying all the averments of the appellant. It is the further case of the 2nd respondent that the issuance of the policy was subject to the condition that the owner of the vehicle fulfills his promise to pay the consideration and any breach/failure would result in cancellation of the ab initio. But, the cheque bearing No.804927 dated 04/06/2008 drawn on State Bank of India West CIT Nagar branch Chennai for a sum of Rs.15,000/- issued by owner of the vehicle bearing Registration No. TN-09-AT-8652 towards the payment for the premium of the aforesaid policy when presented for collection was returned unpaid with reasons "Insufficient funds" by the 1st respondent's banker, hence the aforesaid policy stands cancelled void ab initio from the date of inception. Hence, the 2nd respondent is not liable to pay compensation.

6. Considering the pleadings, counter pleadings and the evidences & witnesses produced on either side, the Tribunal has awarded a sum of Rs.25,000/- to the 1st appellant towards Loss of income, Transportation, Extra nourishment, Medical expenses and Pain and suffering. With regard to 2nd appellant, the Tribunal has awarded Rs.3,04,000/- and the same is hereby tabulated:

Particulars	Amount
Transport to Hospital	Rs.5,000/-
Extra Nourishment	Rs.3,000/-
Damage to clothing and materials	Rs.1,000/-
Medical Expenses	Rs.1,00,000/-
Attender charges	Rs.5,000/-
Loss of amenities	Rs.30,000/-
Pain and sufferings	Rs.40,000/-
Permanent Disability	Rs.1,20,000/-
Total	Rs.3,04,000/-

7. Not being satisfied with the award passed by the Tribunal, the appellants have come up with this present appeal before this Court.

8. Before the Tribunal, on the side of the appellant three witnesses were examined viz., P.W.1 to P.W.3 and marked eleven documents viz., Ex.P1 to Ex.P11. On the side of the respondent one witness was examined viz., R.W.1 and five documents were marked viz., Ex.R1 to Ex.R5.

9. The learned counsel for the appellants submitted that the Tribunal erred in not granting pay and recovery rights to the Insurance Company as the vehicle was duly covered by the valid Insurance policy issued by the 2nd respondent herein. He would further contend that the Tribunal has not awarded any amount towards Transport to Hospital, Loss of earning, Transportation and loss of amenities.

10. The learned counsel for the second respondent/Insurance Company submitted that the Tribunal after verifying the records observed that the Insurance policy does not exist on the date of the accident and rightly fixed the liability on the part of the owner of the vehicle, which is perfectly valid in the eye of law. Hence, there is no necessity to interfere with the award passed by the Tribunal.

11. With regard to negligence aspect, it is seen that P.Ws.1 and 2 deposed that the driver of the car is the cause for the accident. Ex.P.1/F.I.R corroborates with the oral evidence of P.W.1 and 2. Moreover, the driver of the offending vehicle failed to appear before the Tribunal. Therefore, based on the oral and documentary evidences, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the car. This Court is of the view that the findings of the Tribunal are very reasonable, weightage of evidence, probabilities of case and settled principles of law and hence the same are confirmed.

12. With regard to quantum in M.A.C.T.O.P.No.1433 of 2009 it is seen in the claim petition that the injured was working as Computer Service Engineer in M/a Nano Computers and thereby earning Rs.7,000/- per month. Immediately after the accident the injured was taken to Govt.General Hospital, Chennai and treated as out patient. Hence, a sum of Rs.25,000/- is awarded towards Loss of income, Transportation, Extra nourishment, Medical expenses and Pain and suffering.

13. With regard to quantum in M.A.C.T.O.P.No.1434 of 2009, Ex.P.5 Discharge summary reads to the effect that he had taken treatment as in-patient at Kumaran Hospitals from 30.04.2009 to 02.05.2009. He had suffered fracture of both bones at left leg. Closed II nailing was done on 02.05.2009. P.W.3/Dr.Thiagarajan examined the injured and assessed disability at 70%. (50% for both bone fracture at left leg and 20% for fracture of left frontal bone and skull). However, considering the nature of injuries sustained by the injured, the Tribunal has taken only 60% as disability and determined Rs.2,000/- per percentage and awarded Rs.1,20,000/- (60% x Rs.2,000) as compensation towards the head disability. As such, the amount awarded by the Tribunal under various heads are just and reasonable hence the same are hereby confirmed. Thus, the Tribunal has awarded Rs.3,04,000/- as total compensation for the claimant/2nd appellant in M.A.C.T.O.P.No.1434 of 2009. This Court is of the view that the findings of the Tribunal with regard to quantum are very reasonable, weightage of evidence, probabilities of case and settled principles of law and hence the same are confirmed.

14. In the result, these Civil Miscellaneous Appeals are dismissed. The first respondent/Owner of the vehicle shall deposit the entire compensation amount, along with interests and

costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made the appellants/claimants are permitted to withdraw the same, on making proper application before the Tribunal. No costs.

-s/d-
Assistant Registrar

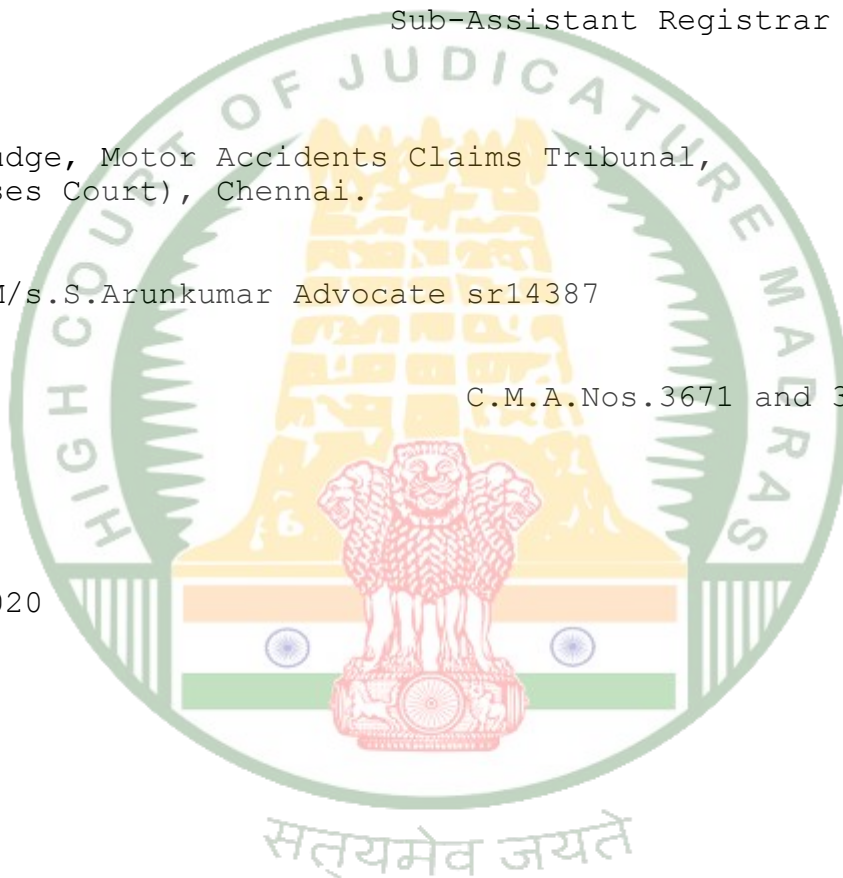
True Copy
Sub-Assistant Registrar

smn
To
The III Judge, Motor Accidents Claims Tribunal,
Small Causes Court), Chennai.

+1 cc to M/s.S.Arunkumar Advocate sr14387

C.M.A.Nos.3671 and 3672 of 2013

sj(co)
aa03/11/2020



WEB COPY