

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.318 of 2016 and
C.M.P.No.2504 of 2016
(Heard through video conferencing)

Branch Manager,
TATA AIG General Insurance
Company Limited,
Peninsula Corporate Park,
Piramal Towers,
Mumbai.

.... Appellant/2nd Respondent

Vs

1.N.Velliangiri,
S/o Nalli Chettiyar,
Kanurpudhur, Sevur Via,
Avinasi Taluk.

....1st Respondent/Petitioner

2.Marimuthu
S/o Ayyasamy,
Senni Malai Kavundanpudur,
Sembianallur,
Velayudampalayam Post,
Avinasi Taluk.

3.Managing Director,
Tamil Nadu State Transport
Corporation Limited,
37, Mettupalayam Road,
Kovai.

.... Respondents2 & 3/
Respondents 1 & 3

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.139 of 2012 dated 17.06.2015 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Judge, Tiruppur.

For Appellant : Ms.Harini for
Mr.N.Vijaya Raghavan

For R.1 : Mr.Lokesh for
Mr.Ma.P.Thangavel

For RR2 & 3 : No Apperance

JUDGMENT

On 27.08.2012, at about 9.00 hours, when the claimant was proceeding in his motor cycle bearing registration No.TN 9 7024, at Avinashi to Annur Road, near Aarigoundampalayam bus stop, a Lorry bearing registration No.TN 30 Y 3636 driven by the Driver which was coming from the East West driven rashly and negligently and without adhering the traffic regulations applied the break and hit the claimant. At the same time, a bus bearing registration No.TN 38 N 1595 from East West driven rashly and negligently also hit the claimant. In the said accident, the claimant sustained grievous injuries leading to amputation of right lower limb below his thigh and also injuries all over the body. The claimant has filed a claim petition before the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Tiruppur for Rs.24 lakhs as compensation. The owner of the Lorry, its Insurance Company and the Tamil Nadu State Transport Corporation, the owner of the passenger bus were arrayed as respondents in the claim petition.

2.At the time of accident, the claimant was 35 years old and was working as an Elementary School Teacher earning Rs.27,884/- per month. Taking note of the amputation of his right lower limb, the Tribunal has assessed the functional disability @ 25% and has awarded Rs.14,67,000/-. The Tribunal taking note of the fact that the accident has occurred due to the rash and negligent driving of the Lorry, insured under the appellant Insurance Company and due to the rash and negligent driving of the Bus owned by the third respondent Transport Corporation, has shared the liability to pay the compensation among the appellant Insurance company and the third respondent Transport Corporation, equally.

3.The Insurance Company has preferred the present appeal on the ground that the Driver of the Lorry which is insured under them was vigilant and not caused the alleged accident. It was the claimant who was right ahead of the Lorry rashly and negligently lost his control of the speed and dashed against the

Lorry. At that time, the Bus owned by the third respondent Transport Corporation which was coming on the side hit the claimant vehicle and caused the accident.

4. Heard the learned counsel for the Appellant Insurance Company; learned counsel for the first respondent/claimant and there is no representation on behalf of the respondents 2 and 3.

5. When the matter was taken up for final disposal, the learned counsel for the appellant Insurance Company would submit that the Insurance Company has already deposited its liability of 50% of compensation with interest. Regarding the contribution and apportionment of liability, the learned counsel would submit that the claimant evidence in cross examination attributing the negligence on the part of the Driver of the Bus owned by the third respondent Transport Corporation not been taken into consideration by the Tribunal and 50% of the liability has been wrongly imposed on the appellant Insurance Company.

6. A perusal of Ex.P.1 - FIR and the evidence given by P.W.1, the victim claimant, eye witness to the accident and who is the informant to the Police for registering FIR - Ex.P.1 indicates that the Driver of the Lorry and the Driver of the Bus have failed in their diligence while driving the vehicles and thereby this freak accident has taken place. The percentage of responsibility cannot be fixed with scientific precision, in case of this nature, with the given facts and evidence distributing negligence equally between the two vehicles, is proper. Therefore, this Court finds no error in fixing the liability equally on both the Drivers viz., the Driver of the Lorry and the Driver of the Bus.

7. Regarding the quantum of compensation, the award of Rs.14,67,000/- for causing 25% of functional disability to the Elementary School Teacher earning more than Rs.27,000/- per month for amputation of right lower limb below thigh is appropriate and needs no interference. The compensation awarded under the conventional heads is also reasonable. Hence, the appeal is liable to be dismissed.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. The claimant is permitted to withdraw the amount deposited by the appellant Insurance Company

with interest as awarded by the Tribunal. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

jbm

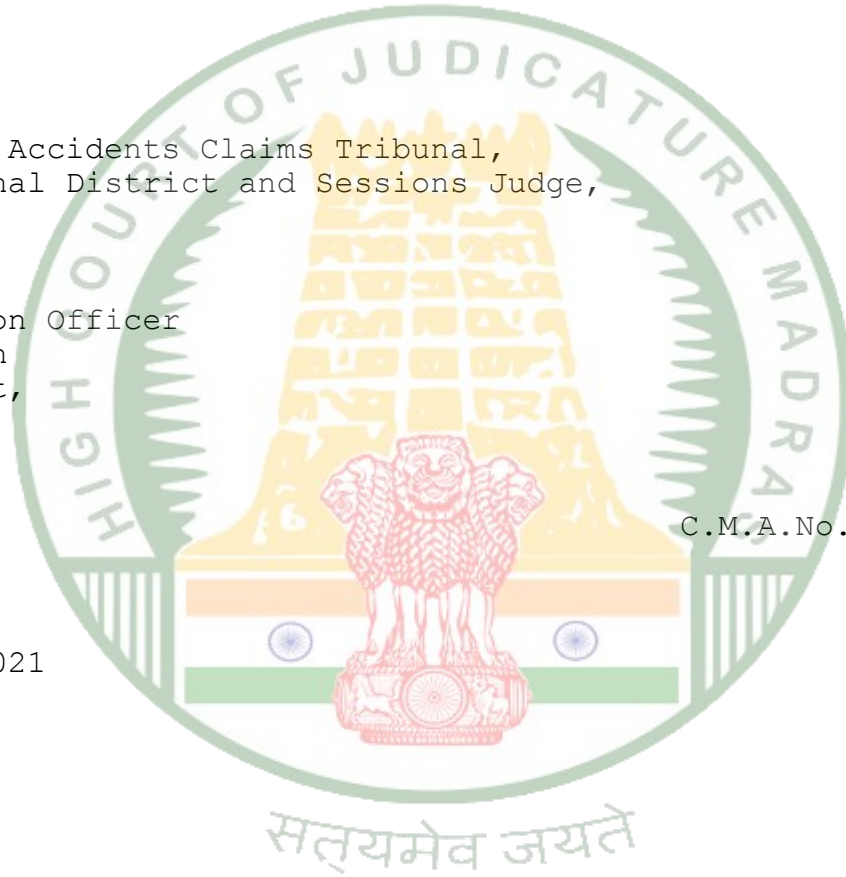
To

The Motor Accidents Claims Tribunal,
I Additional District and Sessions Judge,
Tiruppur.

Copy to:
The Section Officer
VR Section
High Court,
Madras

C.M.A.No.318 of 2016

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