

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.81 of 2016

and

C.M.P.No.829 of 2016

1.R.Venkatesh Shyamkumar ...1st Appellant/ 1st Repondent

2.K.R.Ranganathan ...2nd Appellant/3rd Respondent

/versus/

1.G.S.Balachandran ...1st Respondent /Claimant

2.V.Saraswathi ...2nd Respondents/2nd Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 20.10.2010 made in M.C.O.P.No.300 of 2007 on the file of the Motor Accidents Claims Tribunal cum Second Additional Subordinate Judge, Coimbatore.

For Appellants : No appearance

For Respondents: Mr.P.Mathivanan for R1

: No appearance for R2

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the driver and the owner of the offending vehicle aggrieved by the award passed by the Tribunal to compensate the injured claimant.

2. The factual matrix of the appeal is that the injured claimant, who was travelling in his motorcycle bearing registration No.TN 38 AD 7688, was hit by a motorcycle bearing registration No.TN 38 H 8885 driven by the 1st appellant herein owned by the 2nd appellant. The injured sustained closed comminuted fracture shaft femur proximal third middle third

junction right. He was conducted surgery at Ganga hospital and he was treated as in-patient from 10.08.2006 to 20.08.2006. Based on the First Information Report and medical records, the Tribunal has awarded a sum of Rs.85, 062/- as compensation jointly and severally payable by the appellants.

3. The present appeal is filed on the ground that the Tribunal has erroneously held the appellants are liable to compensate when the injured claimant had no valid insurance for his vehicle. The Tribunal ought not to have fixed the liability on the appellants. Further the quantum of compensation also questioned by the appellants as excessive.

4. Based on the evidence placed before the Tribunal, this Court finds that the injured is a Physiotherapist working in Ganga hospital. On 10.08.2006, while he was proceeding to the hospital, the 1st appellant herein was riding his motorcycle rash and negligently and recklessly hit the claimant. The claimant sustained fracture injury. The First Information Report marked as Ex.P-1 indicates that the 1st appellant is the tort-feasor and the accident occurred due to his negligence. The 1st appellant has admitted guilt and paid a fine.

5. In the said circumstances, after admitting the accident occurred due to his negligence, the appellant as rider and owner of the offending vehicle cannot be exempted from the liability. The wound certificate Ex.P-2 and discharge certificate Ex.P-7 reveals that for 11 days the claimant was in the hospital as in-patient and rod has been fixed after surgery for the comminuted fracture. The Tribunal on considering all these facts has awarded Rs.40,000/- towards disability and Rs.15,000/- for pain and suffering. Based on the medical bill, a sum of Rs.20,062/- has been awarded. The compensation under other non conventional heads are fair and nominal which does not warrants any interference. Hence this Court finds no merit in this appeal.

6. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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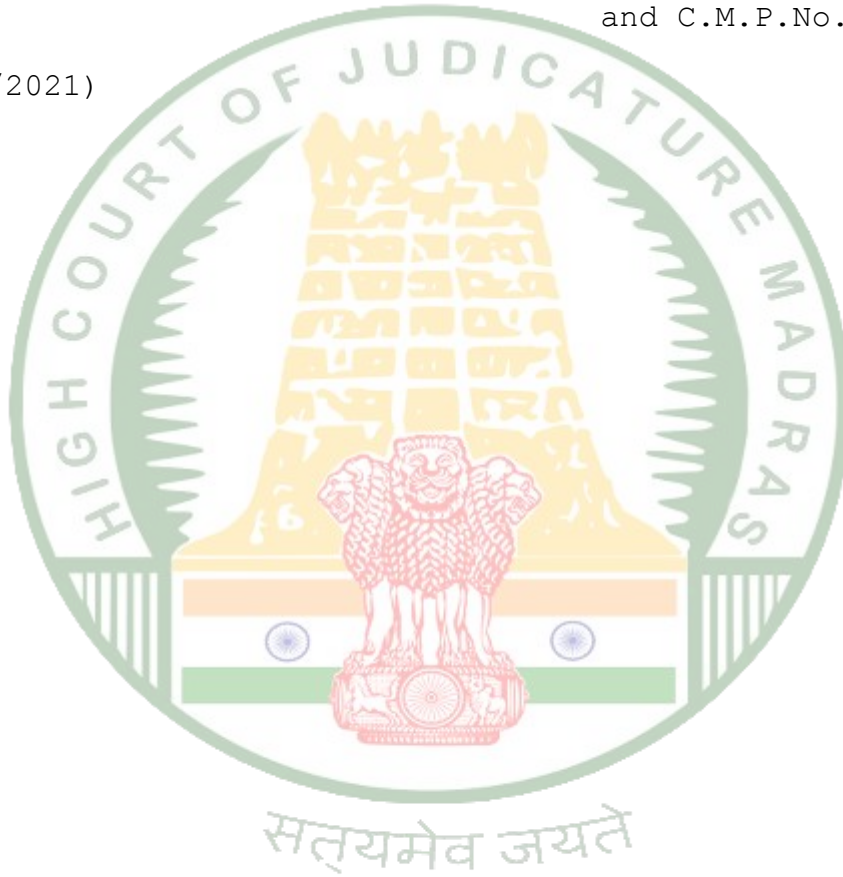
The Motor Accidents Claims Tribunal cum Second Additional
Subordinate Judge, Coimbatore.

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The Section Officer
VR Section, High Court, Madras.

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