

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1539 of 2014

and

C.M.P.Nos.1 & 2 of 2014

Bajaj Allianz General Insurance Company Limited,
No.25 and 26, Prince Towers, 4th Floor,
College Road, Nungambakkam,
Chennai-6.

... Appellant/2nd Respondent/2nd Respondent

Vs.

1.P.Thangarasu ...Respondent/Petitioner/Petitioner
2.T.M.Kannan .. Respondents/1st Respondent/1st Respondent

(2nd respondent/ 1st respondent exparte in Lower Court and hence
Notice to 2nd respondent / 1st respondent may dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 05.01.2013 made in M.C.O.P.No.232 of 2010 on the file of
Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.S.Kaithamalai Kumaran

For R2 : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
appellant/Insurance Company challenging the award dated
05.01.2013 made in M.C.O.P.No.232 of 2010 on the file of Motor
Accident Claims Tribunal, Chief Judicial Magistrate, Erode.

2.The appellant/Insurance Company is the 2nd respondent in
M.C.O.P.No.232 of 2010 on the file of Motor Accident Claims
Tribunal, Chief Judicial Magistrate, Erode. The 1st respondent
filed the said claim petition claiming a sum of Rs.5,00,000/- as

compensation for the injuries sustained by him, in a road accident that took place on 17.01.2010.

3.The case of the claimant is that on 17.01.2010 at about 12.30 hours, the claimant was riding his moped across Salem to Kovai highways from east to west near IRTT turn off. The second respondent driving a car bearing Regn.No.TN-07-BC-8508 towards Salem direction came along the highway in a rash and negligent manner and lost control and hit the moped. Due to the said impact, the claimant sustained grievous injuries all over his body.

4.According to the 1st respondent, the vehicle bearing Registration No.TN-07-BC-8508 is the cause of the accident. The 2nd respondent's is the owner of the said car and the appellant is the insurer of the motorcycle. Hence, the 1st respondent has filed the above claim petition claiming compensation. The 2nd respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to rash and negligent riding by the claimant. Hence, the appellant / Insurance Company is not liable to pay compensation.

6.Before the Tribunal, P.W.1 to P.W.3 were examined and twenty documents were marked as Exs.B1 to B20. The appellant examined authorized officer of its office as R.W.1 and 1 document was marked as Ex.B1.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the driver of the car belonging to the 2nd respondent and awarded a sum of Rs.3,11,250/- as compensation and directed the appellant/Insurance Company to pay the compensation to the claimant/first respondent.

8.Against the said award dated 05.01.2013 made in M.C.O.P.No.232 of 2010, granting compensation to the first respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the trial Court having rightly observed that the first respondent herein admits in cross examination that: (i) he was riding two wheeler TVS XL Super bearing Regn.No.TN59R7249 from east to west across the road, (ii) he stopped the moped near an opening in the median and then crossed the road, (iii) he saw the car bearing Regn.No.TN-07-BC-8508 from a distance of 200 feet, (iv) he did not stop the moped after noticing the car and proceeded to cross the road and having held

that from the oral testimony of the 1st respondent herein and rough sketch (Ex.A3), Tribunal comes to know that the occurrence took place when the 1st respondent herein was crossing the road from east to west. The 1st respondent must have been careful and diligent while crossing the road. He must know that many vehicles driven at high speed would be coming up along the road. From the evidence of P.W.1, it appears that the 1st respondent herein/petitioner had crossed the eastern lane and when he was crossing the western lane, he was hit by the car. He did not have the patience and attempted to cross the road at the time of accident. The Court below failed to appreciate that there was no independent evidence on the side of the claimant to attribute any degree of negligence on the car driver. The Court below ought to have observed that FIR was lodged by the brother of the claimant, who was not an eye witness. Without prejudice to all the foregoing grounds, the appellant submits that in any event, greater degree of negligence not less than an extent of 75% ought to have been found by Tribunal on the claimant himself and not merely an extent of 25% only as determined by Tribunal by overlooking many vital aspects as above stated. In any event, the monthly income of the claimant at Rs.10,000/- as taken notionally by Tribunal in the absence of any evidence worthy of acceptance, is very much on higher side and the same deserves to be sliced down subsequently. The award of Principal amount of Rs.3,11,250/-, representing the liability of the respondents in the claim petition, as arrived by lower Court, is in any event, disproportionally huge and highly excessive and the same deserves to be sliced down substantially. The Court below has, in any event, erred in allowing a high rate of interest at 9% per annum, when the rate of interest in the grant of compensation allowed by appellate Courts in similar cases as prevailing at the time of adjudication of this claim has been much lower. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

11. It is seen that the claimant was working as a loading and unloading assistant in S.V. Turmeric warehouse Store and he was earning not less than Rs.25,000/- per month. Without any documents, the income of the claimant is fixed as Rs.10,000/- and the multiplier is fixed as 15 and awarded a sum of Rs.3,60,000/- ($10000 \times 20/100 \times 12 \times 15 = 3,60,000/-$), which is hereby confirmed. The Tribunal has awarded a sum of Rs.10,000/- towards "Pain and sufferings", which is very meager. This Court is inclined to award a sum of Rs.20,000/- for the same. After considering the medical bills and receipts, the Tribunal has

awarded a sum of Rs.45,000/- towards "medical expenses", which is just and reasonable and the same is hereby confirmed. The Tribunal did not award any amounts towards "transportation", "attender charges", "nutrition" and "loss of amenities". Hence, this Court is inclined to award a sum of Rs.5,000/- each towards the same heads. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.3,60,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Medical Expenses	Rs.45,000/-
4.	Transportation	Rs.5,000/-
5.	Nutrition	Rs.5,000/-
6.	Attender charges	Rs.5,000/-
7.	Loss of amenities	Rs.5,000/-
	Total	Rs.4,45,000/-
	25% of the negligence	Rs.1,11,250/-
	75% of the compensation to the claimant	Rs.3,33,750/-

12. Further, the Tribunal while awarding a sum of Rs.4,15,000/- to the claimants fixed 25% negligence on the claimant thereby, deducted a sum of Rs.1,03,750/- and awarded a sum of Rs.3,11,250/-.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the total amount of compensation awarded by the Tribunal at Rs.3,11,250/- is hereby enhanced to Rs.3,33,750/- (by deducting a sum of Rs.1,11,250/- towards 25% negligence on the claimant) together with interest at the rate of 9% per annum from the date of petition till the date of deposit. This Court is inclined to fix 25% negligence on the part of the claimant, since the claimant, inspite of noticing the car proceeding towards him, crossed the road and he is also negligent. Hence, the claimant is entitled to get 75% of the compensation amount awarded by this Court viz, Rs.3,33,750/-. The 1st respondent/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation before the Tribunal. The appellant is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent /claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the

amount already withdrawn, if any. No costs. Consequently,
connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sbn

To
1.Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Erode.

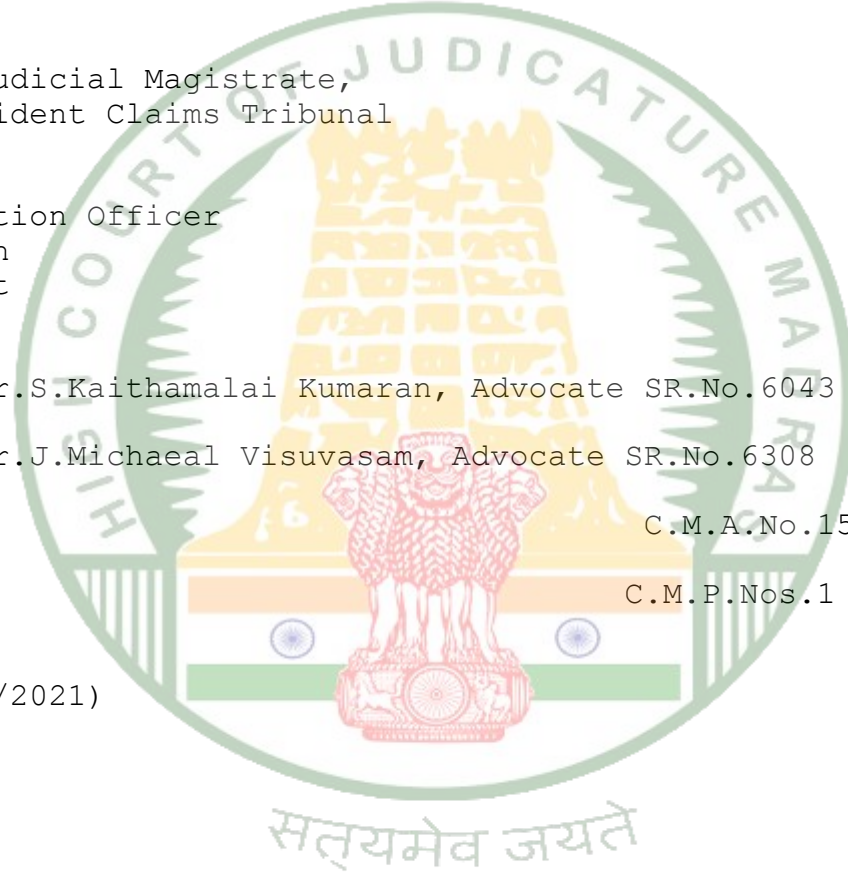
2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.6043

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.6308

C.M.A.No.1539 of 2014
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RLD (CO)
GMY (06/05/2021)



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