

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.296 of 2014

and

M.P.No.1 of 2014

Branch Manager, The Oriental Insurance
Company Ltd., 59, Raja Street,
Gobichettipalayam. ... Appellant/Respondent-2

Vs.

1.Ponnusamy
2.Sathyaseelan ... Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment dated 28th day of March 2013, made in M.C.O.P.No.150 of 2011, on the file of Motor Accident Claims Tribunal (II Additional District and Sessions Court) Tiruppur.

For Appellant : Mr.K. Vinod for Mrs. Eleveera Ravindran
For Respondent-1 : Mr.Ma.pa.Thangavel
R2 : Exparte

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/Insurance Company against the decree and Judgment dated 28th day of March 2013, made in M.C.O.P.No.150 of 2011, on the file of Motor Accident Claims Tribunal (II Additional District and Sessions Court) Tiruppur.

2.The appellant/Insurance Company is the Insurer of the alleged vehicle involved in the accident. The first respondent is the claimant and the second respondent is the owner of the vehicle.

3.The case of the petitioner is that on 19.12.2010 at about 7.30 p.m, when the first respondent was riding his two wheeler bearing Registration No.TN-39-V-4532 in Tiruppur to Peranamanallur Road at Ayyampalayam a car bearing Registration No.TN-04-C-8889, came in the opposite direction in a rash and negligent manner and dashed against the two wheeler of the first respondent. Due to the impact the first respondent sustained grievous injuries and he was immediately taken to Revathi Hospital, Tiruppur. The accident occurred due to the negligence on the part of the driver of the car. Hence, he filed a claim petition before the Tribunal seeking Rs.6,00,000/- as compensation. The Tribunal after analyzing

the materials available on record awarded Rs.4,91,100/- as compensation with 7.5% from the date of petition till the date of realization.

4. Aggrieved over the same the appellant/Insurance Company has come forward with this appeal.

5. The learned counsel for the appellant/Insurance Company contended that the Tribunal failed to verify the vital aspects, such as whether the rider of the two wheeler and the driver of lorry possess valid driving licence and Registration Certificate at the time of the accident. He would further contend that the injuries sustained by the victim are very simple in nature and awarding Rs.4,53,960/- towards loss of income is highly excessive. In any event, the award passed by the Tribunal is on the higher side.

6. Per Contra, the learned counsel for the first respondent/claimant submitted that the accident the Tribunal has verified all the aspects and awarded a just compensation, which is very low when compared to the injuries sustained by the claimant. The learned counsel also states that the claimant has sustained multiple fractures in right leg and multiple abrasions all over the body and he was admitted as inpatient in Revathi Hospital and underwent surgeries. However, the Tribunal has considered the same and awarded lesser amount of compensation.

7. It is seen from the the Order of the Tribunal, the learned Judge has verified Ex.P.1/First Information Report and the copy of the Insurance Policy. Ex.P.1/First Information Report reveals that the driver of the car, is the tortfeasor for the accident and the copy of the Insurance Policy reveals that the policy exists on the date of the accident. Hence, relying upon the same, negligence aspect is fixed on the part of the driver of the car and fastened the liability on the part of the Insurance Company. Hence, the findings of the Tribunal, with regard to negligence aspect is perfectly valid in the eye of law and does not warrant interference by this Court.

8. On perusal of the records with regard to quantum, the avocation and income of the injured in the claim petition has been stated that he is doing Agricultural work and earning Rs.10,000/- per month. He has not produced any proper evidence to prove the income as required by law. Hence, in the absence of any documentary evidence, monthly income is fixed as Rs.7,200/-. Even though Ex.P.13/ Disability Certificate reveals the Doctor has assessed 37% disability for the claimant, but considering the nature of injuries 35% is taken as disability and applied '15' multiplier. Hence, his future loss of income or earning power is Rs.7,200/- x 12 x 15 x 35% =Rs.4,91,000/- The Tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings and Rs.12,500/- towards Medical Bills. Thus, the Tribunal awarded Rs.4,91,000/- as compensation.

9. This Court is of the view that some modification is required with regard to the quantum arrived by the Tribunal and the same are modified. The monthly income of the first respondent/claimant is fixed at Rs.6,000/- with compared to his avocation and thereby the annual income was arrived at Rs.72,000/- and the disability is taken as 30% and the considering the age of the appellant multiplier '14' is applied and quantified Rs.3,02,400/- (Rs.72,000 x 14 x 30%) as loss of income. The Tribunal has not awarded any amount towards the heads Attendant charges, Transportation and Extra Nourishment, hence Rs.5,000/- each is being awarded towards the said heads. Apart from this Rs.25,000/- and Rs.12,500/- was awarded by the Tribunal towards the head pain and sufferings and Medical Bills respectively and the same is confirmed as such. Thus, the modified award amount is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income / earning power	Rs.4,53,600/-	Rs3,02,400/-
2.	Medical Bills	12,500/-	Rs.12,500/-
3.	Pain and suffering	25,000/-	Rs.25,000/-
4.	Transportation	-Nil-	Rs.5,000/-
5.	Attendant charges	-Nil-	5,000/-
6.	Extra Nourishment	-Nil-	5,000/-
	Total	Rs.4,91,000/-	Rs.3,54,900

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,91,000/- is hereby reduced to Rs.3,54,900/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the amount now determined by this Court along with interest and costs, 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, the R1/claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

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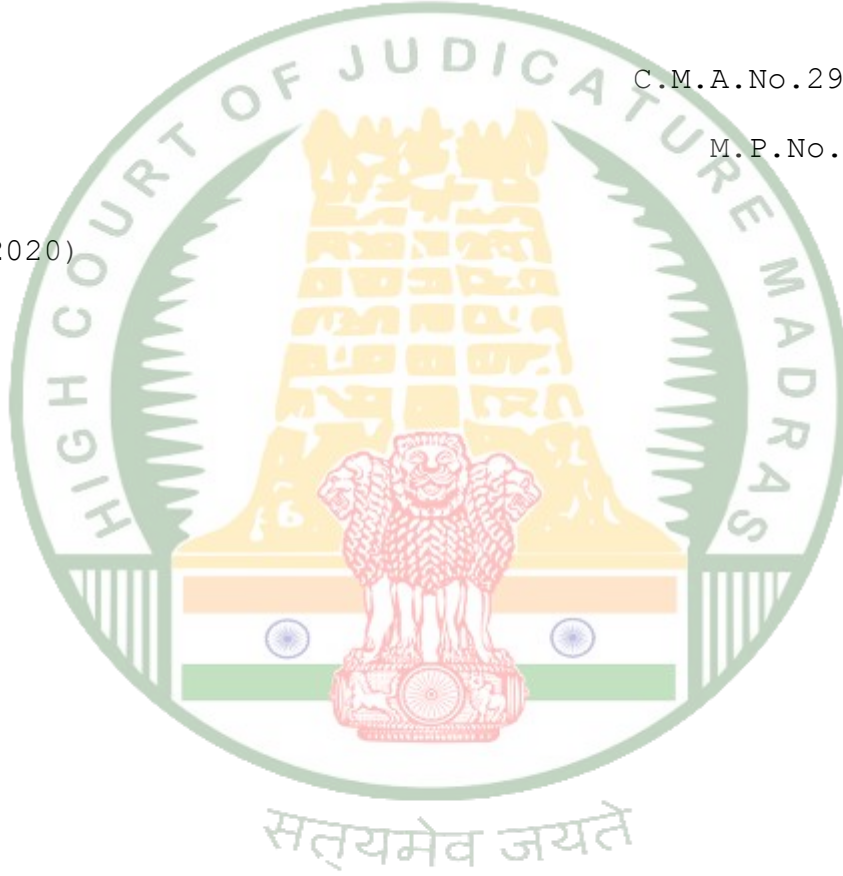
1.II Additional District Judge,
Tiruppur.

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

+lcc to Mrs.Elveera Ravindran, Advocate, S.R.No. 6594
+lcc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No. 6906

C.M.A.No.296 of 2014
and
M.P.No.1 of 2014

VG II(CO)
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