

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1258 of 2017

and C.M.P. No. 6457 of 2017

United India Insurance Co Ltd

No.2 Dr.Sankaran Road

Namakkal Town.

... Appellant/2<sup>nd</sup> Respondent

Vs

1. Madheswaran

2. Dr.S.Babu

... Respondents/Petitioner and  
1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2015 made in M.C.O.P.No.3 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District Court) ,Namakkal.

For Appellant : Ms.I.Malar

For Respondents : Mr. MA.P.Thangavel for R1

R2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.01.2015 made in M.C.O.P.No.3 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District Court), Namakkal.

2.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P. No.3 of 2014 on the file of the Motor Accidents Claims Tribunal, (Additional District Court), Namakkal. The 1<sup>st</sup> respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.09.2013.

3. According to the 1<sup>st</sup> respondent, on the date of accident viz., on 23.09.2013 at about 05.30 p.m, while he was riding in his TVS XL Super bearing Reg. No.TN 28 AP 1606 by the left side of the road towards Namakkal from Mudalaipatti, driver of the TATA ACE bearing Regn No.TN 28 AB 6859 drove the same in a rash and negligent manner and hit against the 1<sup>st</sup> respondent and caused the accident. In the accident, the 1<sup>st</sup> respondent sustained multiple grievous injuries and hence filed the claim petition claiming a sum of Rs.5,00,000/- as compensation against the 2<sup>nd</sup> respondent and appellant as owner and insurer of the said vehicle.

4. The 2<sup>nd</sup> respondent remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1<sup>st</sup> respondent. It is contended that the accident occurred only due to the negligence on the part of the 1<sup>st</sup> respondent and not due to rash and negligent driving by the driver of the TATA Ace belonging to the 2<sup>nd</sup> respondent. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the 1<sup>st</sup> respondent. The appellant also denied the age, avocation and income of the 1<sup>st</sup> respondent. In any event, the compensation claimed by the 1<sup>st</sup> respondent is highly excessive and prayed for dismissal of claim petition.

6. Before the Tribunal, the 1<sup>st</sup> respondent examined himself as P.W.1 and examined Dr.Shyamsundar as P.W.2 and marked 13 documents as Exs.P1 to P13. No oral and documentary evidence was let in on the side of the appellant.

7. The Tribunal, considering the pleadings, oral and documentary evidence, let in by 1<sup>st</sup> respondent held that the accident occurred due to rash and negligent driving by the driver of the TATA ACE belonging to the 2<sup>nd</sup> respondent and directed the appellant-Insurance Company, being the insurer of the TATA ACE to pay a sum of Rs.6,73,000/- as compensation to the 1<sup>st</sup> respondent.

8. Against the said award dated 30.01.2015 made in M.C.O.P.No.3 of 2014, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing the entire negligence on the part of the 2<sup>nd</sup> respondent and liability on the appellant when the 1<sup>st</sup> respondent also contributed negligence to the accident. In the absence of any material evidence, the Tribunal erred in holding that the accident occurred only due to

rash and negligent driving by the driver of the TATA Ace belonging to the 2<sup>nd</sup> respondent. The Tribunal failed to appreciate that the 1<sup>st</sup> respondent has not impleaded the owner and Insurer of the TVS XL Super, driven by the 1<sup>st</sup> respondent. The Tribunal without considering the nature of injuries and period of treatment, erroneously fixed 40% disability as assessed by the Doctor and adopted multiplier method in awarding compensation towards disability. The Tribunal has awarded excessive compensation under different heads than claimed by the 1<sup>st</sup> respondent and hence, prayed for setting aside the award passed by the Tribunal.

10. Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent contended that the Tribunal considering the nature of injuries and 40% permanent disability assessed by the P.W.2 - Doctor, adopted multiplier method and awarded compensation under the head future loss of earning. The total compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1<sup>st</sup> respondent and perused the entire materials on record.

12. It is the contention of the appellant that the accident occurred when the 1<sup>st</sup> respondent, rider of the TVS XL Super negligently crossed the road when the driver of the TATA Ace belonging to the 2<sup>nd</sup> respondent was driving the vehicle in a careful manner. The Tribunal erred in fixing entire negligence on the part of the driver of the TATA Ace, without considering the contributory negligence on the part of the 1<sup>st</sup> respondent/injured claimant. From the materials available on record, it is seen that in the absence of any material evidence to prove the contention of the appellant, the Tribunal considering Ex.P1 - FIR and Ex.P4 - Charge Sheet, wherein the Police has laid the charge against the driver of the 2<sup>nd</sup> respondent vehicle and in the absence of any contra evidence on the side of the appellant, held that the accident has occurred only due to rash and negligent driving by the driver of the vehicle belonging to the 2<sup>nd</sup> respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as the quantum of compensation granted by the Tribunal is concerned, the Tribunal considering the evidence of P.W.2-Doctor who assessed that the 1<sup>st</sup> respondent suffered 40% permanent disability, the disability certificate issued by P.W.2 Doctor, Scan and Scan report marked as Exs.P12, P10 and P11 respectively, fixed the permanent disability suffered by the 1<sup>st</sup> respondent as 40%. The 1<sup>st</sup> respondent was aged 25 years at the

time of accident and was working as a Borewell Rock Driller and was earning a sum of Rs.12,000/- per month. Considering the nature of work and the disability suffered by the 1<sup>st</sup> respondent, the Tribunal adopted multiplier method and awarded compensation under the head future loss of earning, which is proper. As far as the contention of the appellant that the Tribunal has awarded more compensation than the claim of the 1<sup>st</sup> respondent is concerned, it is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. In any event, the total compensation awarded by the Tribunal under different heads are just compensation and are not excessive warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.6,73,000/- awarded by the Tribunal as compensation to the 1<sup>st</sup> respondent, together with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount 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 to the credit of M.C.O.P.No. 3 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District Court), Namakkal. On such deposit, the 1<sup>st</sup> respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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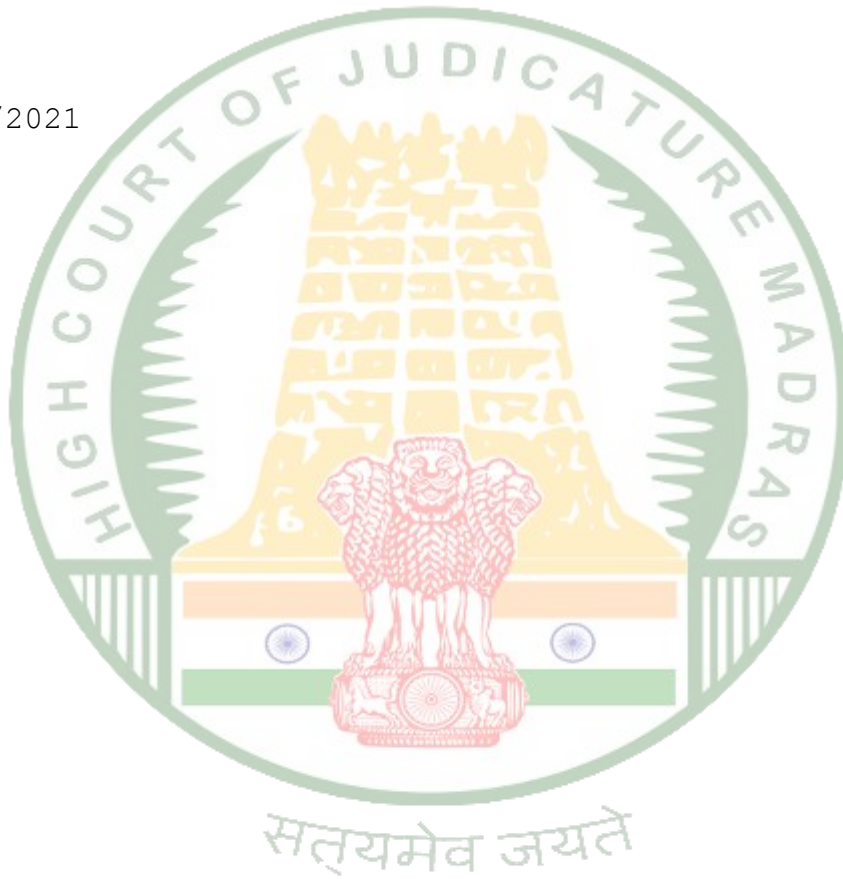
1. The Motor Accident Claims Tribunal,  
(Additional District Judge),  
Namakkal.

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

+1cc to Mr.T.Ravichandran, Advocate Sr.13704  
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.13668.

C.M.A.No.1258 of 2017

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