



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 10.03.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.953 of 2010

and

M.P(MD)No.3 of 2010

1.The Executive Engineer,
Public Works Department,
(Building Construction Division)
Tirunelveli.

2.The District Collector,
Tirunelveli.

.. Appellants

vs.

1.Krishnamoorthy

2.Jeyakumar Saravanan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 30.07.2008 made in MCOP No.214/2006 on the file of the Motor Accident Claim Tribunal-cum-Principal Sub-Court, Tenkasi.

For Appellant : Mr.J.Gunaseelanmuthiah
Addl. Govt. Pleader

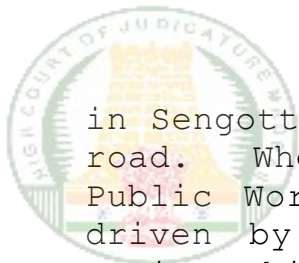
For Respondents : Mr.K.Samidurai (for R1)
R.2 dismissed vide Court Order
dated 29.11.2017

J U D G M E N T

This appeal is directed against the Judgment of the Motor Accident Claims Tribunal-cum-Principal Sub-Court, Tenkasi passed in MCOP No.214/2006.

2.This is a case of injury. The claimant met with an accident on 25.06.2006. According to him, he was riding a motorcycle bearing registration No.TN-72-X-9333 from west to east direction

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in Sengottai - Puliyarai main road on the extreme left side of the road. When he was near TTC bus stop, a jeep belonging to the Public Works Department bearing registration No.TN-07-J-1626 was driven by its driver in a rash and negligent manner and hit against him. In the accident, he was thrown away and sustained multiple fractures on the right leg and shoulder and grievous injuries all over his body. Immediately, he was carried to Government Hospital, Sengottai and after providing first aid, he was referred to Tirunelveli Medical College Hospital, but he took treatment as inpatient in Thiraviyam Hospital at Nagercoil. The claimant would further state that from 25.06.2006 to 16.07.2006 he was taking intensive care treatment at Thiraviyam Hospital. During that time, he underwent surgery and skin grafting was also done and plate was implanted. It is further stated that again he was admitted in the same hospital and took treatment. So, he is entitled for total compensation of Rs.10,00,000/-.

3.In the counter, the appellant herein disputed the manner of accident. It is stated that on 25.06.2006, the appellant's driver was proceeding from west to east on Quilon - Thirumangalam national highways, but the claimant, who was proceeding in his two wheeler, came in a rash and negligent manner and suddenly turned the vehicle on his right side. On seeing the claimant, the driver stopped the jeep, despite the same, he hit against the jeep and he invited the accident. So, the appellant is not liable to pay compensation.

4.Before the Tribunal, the claimant examined himself as P.W.1 and examined Dr.Vedamurthi as P.W.2 and marked 19 documents. On the side of the appellant, one Subramanian was examined as R.W.1, but no documentary evidence was produced.

5.P.W.1 has spoken about the accident in his evidence. Ex.P.1 First Information Report, Ex.P.2 Accident Register, Ex.P.3 Motor Vehicles Inspector's Report, Ex.P.5 Rough Sketch, Ex.P.6 Observation Mahazer and Ex.P.7 Charge Sheet were produced to corroborate the evidence of P.W.1. The evidence produced by the claimant indicates that the criminal case was registered against the driver of the jeep and he was also prosecuted before the criminal Court. On the basis of the evidence, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the jeep. The Tribunal after analyzing the evidence of R.W.1, rejected the same. I find no illegality in the finding of the Tribunal on negligence.

6.P.W.2 has stated that the claimant has suffered 70% permanent disability. Ex.P.18 is the disability certificate. Ex.P.19 X-rays. However, the Tribunal was of the opinion that 70% of the disability was higher and has taken 60% and by



applying Rs.2000/- per one percentage disability, awarded Rs.1,20,000/- towards permanent disability. On the basis of Exs.P.9 to P.15 and P.17 bills, the Tribunal awarded amount for the medical expenses. Further, Rs.15,000/- was awarded for removal of plate; Rs.40,000/- towards pain and suffering; and Rs.15,000/- for extra nourishment. Considering the nature of injuries suffered by the claimant, I am of the opinion that the award is reasonable. That apart, Rs.1,28,064/- was awarded towards loss of earning capacity, hence, it has to be set aside. In the claim petition, it is stated that he needs Rs.1,00,000/- towards future medical expenses, but the Tribunal has not awarded any amount. Hence, this Court awards Rs.50,000/- towards future medical expenses. Admittedly, the claimant was under treatment for considerable period, but no award was passed towards attendant charges. So, this awards Rs.30,000/- towards attendant charges; Rs.18,000/- towards loss of income during the treatment period. Hence, the amount awarded by the Tribunal Rs.4,80,472/- is reduced to Rs.4,50,408/-.

7.In that view, the Civil Miscellaneous Appeal is partly allowed. The appellants is directed to deposit the modified award amount with accrued 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 order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal Sub Judge,
Motor Accident Claim Tribunal,
Tenkasi.



2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to SPL GP (SR-10534[F] dated 11/03/2021)

JUDGMENT MADE IN
C.M.A(MD)No.953 of 2010
and
M.P(MD)No.3 of 2010
10.03.2021

KM(28.05.2021) 4P 5C