

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1228 of 2015

and

M.P.No.1 of 2015

M/s.National Insurance Company Limited
Cpirt Veedhi,
Tirupur.

.... Appellant / 3rd Respondent

vs.

1.Senthil Kumar ... 1st Respondent / Petitioner

2.Manikandan ... 2nd Respondent / 1st Respondent

3.Devaraj ... 3rd Respondent / 2nd Respondent

(2nd & 3rd Respondents are set exparte
in lower court)

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act 1988 against the judgment and decree dated
26.02.2013 in MCOP No.592 of 2010 on the file of Motor Accident
Claims Tribunal (First Additional District Judge) at Tirupur.

For Appellant : M/s.R.Sreevidhya

For Respondents : Mr.S.P.Yuvaraj for R1

JUDGMENT

The appeal has been preferred by the insurance company against
the award of Rs.4,73,717/- awarded by the tribunal to the 1st
respondent/claimant, a driver aged about 32 years alleged to be
earning a sum of Rs.3300/- per month, for the injuries sustained by
him in the accident occurred on 19.08.2009.

2. Heard Mrs.R.Sreevidhya, learned counsel appearing for the appellant/insurance company and Mr.S.P.Yuvaraj, learned counsel appearing for the 1st respondent/claimant.

3. It is the contention of the learned counsel for the appellant that the claim petition does not disclose any material evidence regarding the injuries and the tribunal erroneously adopted multiplier method to determine the loss of income and therefore she seeks to set aside the award passed by the tribunal.

4. A close scrutiny of the claim petition and the award would show that in Page 4 of the claim petition, it has been categorically stated that the first respondent/claimant sustained fracture and hemorrhage in the brain, skull and face and multiple abrasions all over the body. Immediately after the accident, he was admitted in Kongunadu Hospital, Coimbatore and thereafter in Ponnaiah Hospital. Based on the medical records and PW3 - doctor's evidence, the tribunal, considering the fracture of the maxilla in the left side of the face, injury in the skull, especially hemorrhage in the brain and a consequent weakening of the left leg and hand, rightly determined the disability at 55% though the doctor spoke about 65%. Since the left leg and hand got weakened and does not have the strength to act as a driver as he was before the accident, definitely there is a loss of earning power and therefore the tribunal rightly adopted multiplier method taking the monthly income at Rs.3,300/-. Rs.3,300/- fixed by the tribunal as monthly income of a driver during the year 2009 cannot be said to be on the higher side.

5. The claimant was aged about 32 years at the time of accident and therefore, the tribunal, justifiably adopted multiplier 16 and awarded a sum of Rs.3,48,480/- as loss of earning power in the following manner -

$$\text{Rs.3,300} \times 12 \times 16 \times 55/100 = \text{Rs.3,48,480/-}$$

Rs.25,000/- awarded towards pain & sufferings, Rs.20,000/- towards loss of amenities, Rs.2,000/- each towards extra nourishment and transportation and Rs.76,237/- towards medical expenses as per Ex.P5, in all amounting to Rs.4,73,717/- alongwith interest @ 7.5% is justified and therefore there is no occasion for this court to interfere with the award passed by the tribunal. The appeal fails and the same is dismissed.

6. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

The appellant/insurance company is directed to deposit the entire award amount, alongwith interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same, after adjusting the amount already withdrawn, if any.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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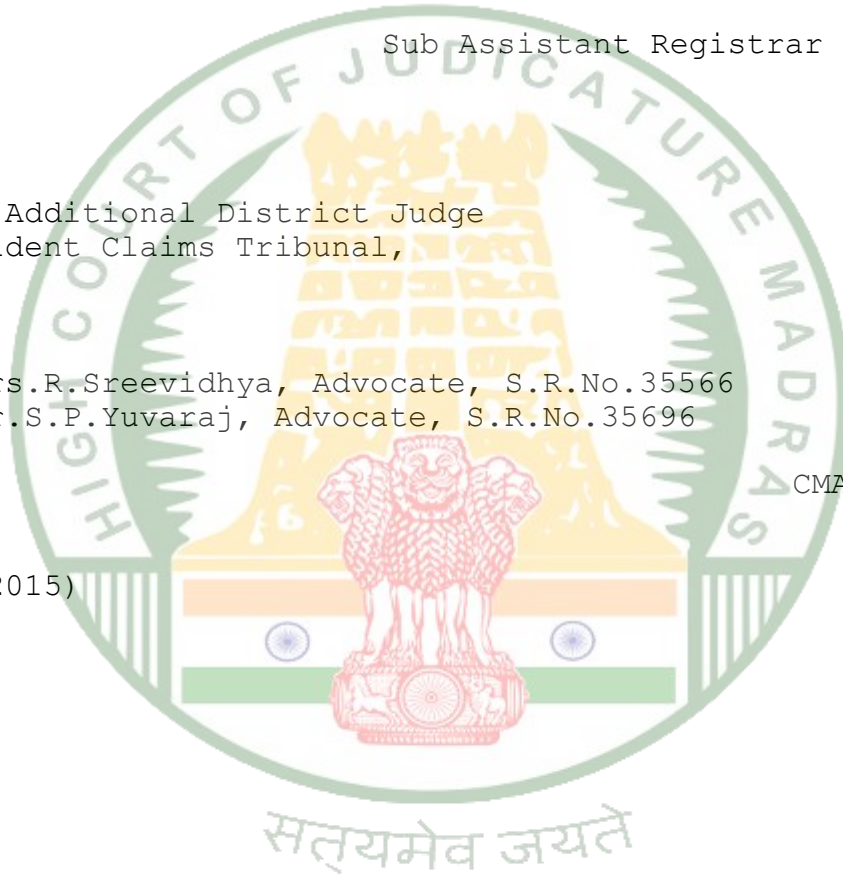
To

The First Additional District Judge
Motor Accident Claims Tribunal,
Tirupur.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.35566
+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.35696

CMA No.1228 of 2015

KU(CO)
CA(06/08/2015)



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