

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.134 of 2015

and

M.P.No.1 of 2015

The New India Assurance Company Ltd.
Branch Office, Nehru Complex
Opp.to Bus Stand, 34/35, Bye Pass Road
Dharapuram-638 657 ... Appellant/Respondent 3

vs.

1.N.Sivasubramanian

2.N.Thangavel

3.A.Subramanian ... Respondents/Petitioner/
Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment, dated 03.09.2014, made in M.C.O.P.No.269 of 2006, on the file of the Motor Accident Claims Tribunal (Additional District Court No.3), Dharapuram.

For Appellant : Mr.S.Manohar

For Respondents: Mr.E.K.Kumaresan (Caveator)

J U D G M E N T

The appellant / Insurance Company has preferred the present appeal against the judgment and decree, dated 03.09.2014, made in M.C.O.P.No.269 of 2006, on the file of the Motor Accident Claims Tribunal / Additional District Court No.III, Dharapuram.

2. The short facts of the case are as follows:-

On 02.07.2003, at about 03.00 p.m., when the claimant was driving his Maruthi 800 Car bearing registration No.TN47 D7700, on Karu-Dharapuram Main Road, the Ambassador Car bearing registration No.TDE 5161, coming in the opposite direction and driven in a rash and negligent manner, dashed against the Maruthi Car. As a result, the claimant sustained

fracture of bone over his left knee and other parts of his body. He subsequently, took treatment as inpatient at Amaravathi Hospital, Karur, K.G.Hospital, Coimbatore, Kottakkal Arya Vaidya Salai, Kottakkal, National Institute of Mental Health and Neuro Science, Bangalore, and Neuro Science Hospital, Madurai. Hence, the claimant filed a claim petition against the driver and owner of the offending vehicle for compensation.

3. The appellant / Insurance Company filed a counter affidavit and resisted the claim petition. It was submitted that the accident was caused only due to rash and negligent driving by the claimant and that he did not have a valid and effective driving licence to drive the car. The averments in the claim regarding age, income and occupation of the claimant, nature of injuries, period of treatment, medical expenses and disability were not admitted. It was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed three issues namely:

- i. Who is responsible for the accident?
- ii. Who is liable to pay the compensation?
- iii. How much is compensation?

5. On the side of the claimant, three witnesses were examined and 58 documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. The Tribunal, after scrutinizing the oral and documentary evidence, awarded a sum of Rs.8,83,718/- as lumpsum to the claimant together with interest at the rate of 7.5% per annum.

7. Aggrieved by the said award passed by the Tribunal, the Insurance Company has filed this appeal.

8. The learned counsel for the appellant has submitted that the Tribunal erred in accepting the disability of claimant at 30% and awarding compensation by adopting multiplier method. Further, the Tribunal erred in fixing the income of the claimant at Rs.10,000/- per month inspite of the finding that there was no proof for income. Further, the award granted under the heads of medical expenses, nutrition, pain and suffering, loss of amenities were also erroneous. Therefore, the learned counsel prayed this Court to set aside the award passed by the Tribunal.

9. The learned counsel for the claimant has submitted that the claimant had sustained 90% disability as per the

evidence of P.W.2 / Doctor. Further, he submitted that due to the accident, the claimant had sustained fracture of bone in his left leg and that he took treatment for injuries sustained in nerves of his brain. The movement of the claimant's left and right hands had been affected. The claimant was working as a Managing Partner in a finance company and earning Rs.20,000/- per month, but the Tribunal had erroneously fixed the disability at 30% by rejecting the evidence of the Doctor / P.W.2, who had assessed the disability sustained by the claimant as 90% as per Ex.P31. Hence, the learned counsel prayed for dismissal of this appeal.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusal of the typed set of papers, this Court is of the view that the multiple method adopted by the Tribunal in assessing the loss of income is not appropriate in the instant case. Further, the award granted under the head of pain and suffering and loss of amenities is also on the lower side. Further, the Tribunal failed to grant award under the head of transport, attender charges and loss of earning during medical treatment period. Hence, this Court restructures the compensation as follows:

i.	Disability	: Rs. 2,70,000/-
	(90% X Rs.3,000/-)	
ii.	Pain and suffering	: Rs. 50,000/-
iii.	Nutrition	: Rs. 10,000/-
iv.	Attender charges	: Rs. 30,000/-
v.	Transport Expenses	: Rs. 15,000/-
vi.	Medical Expenses	: Rs. 2,83,718/-
viii.	Loss of earning during the	
	period of treatment	: Rs. 60,000/-
x.	Loss of amenities	: Rs. 1,65,000/-
		Rs. 8,83,718/-

Accordingly, the total award granted by the Tribunal and restructured as above is confirmed. The rate of interest fixed by the Tribunal remains unchanged.

11. At the time of admission, this Court directed the appellant Insurance Company to deposit the entire award amount with accrued interest and costs. It is open to the claimant to withdraw the entire compensation amount with interest and costs after filing a memo with a copy of this Judgment, subtracting the earlier withdrawal, if any, before the Tribunal.

12. In the result, this civil miscellaneous appeal is dismissed and the Judgment and Decree, dated 03.09.2014, made

in M.C.O.P.No.269 of 2006, on the file of the Motor Accident Claims Tribunal / Additional District Court No.III, Dharapuram, is modified as stated above. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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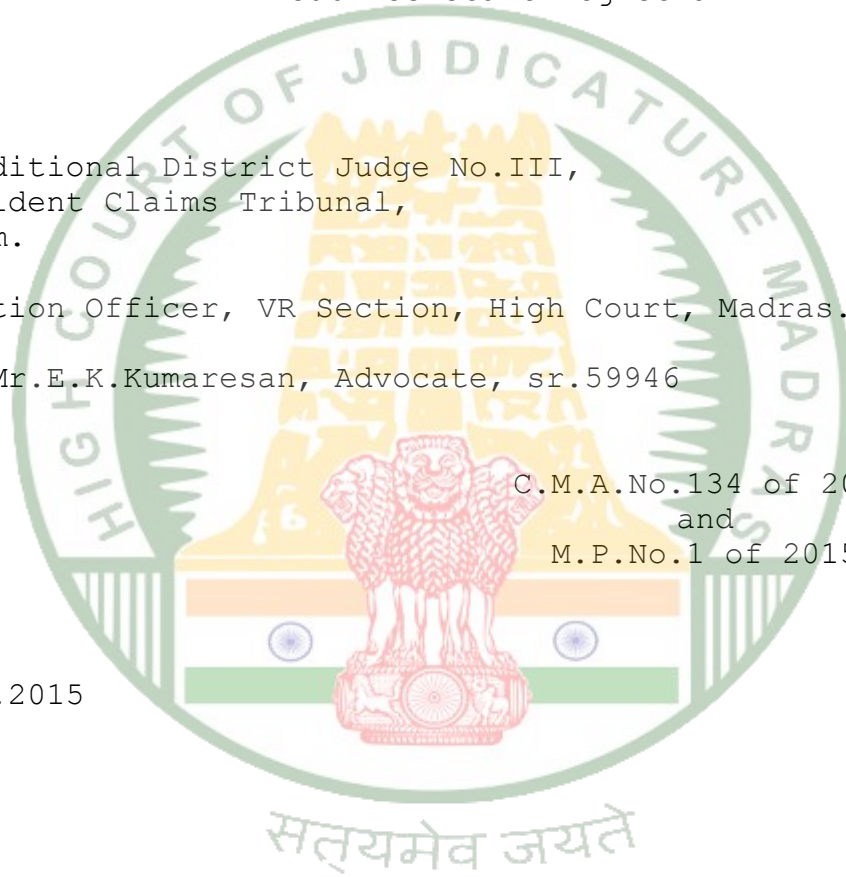
1. The Additional District Judge No.III,
Motor Accident Claims Tribunal,
Dharapuram.

2.The Section Officer, VR Section, High Court, Madras.

+1 cc to Mr.E.K.Kumaresan, Advocate, sr.59946

C.M.A.No.134 of 2015
and
M.P.No.1 of 2015

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