

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.07.2015

CORAM

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1396 of 2015

and

M.P.No.1 of 2015

The Divisional Manager,
United India Insurance Co.Ltd.,
No.91, Kamaraj Salai,
Madurai-625 009.
C/o The Divisional Manager,
United India Insurance Co.Ltd.,
M.M.Reddy Complex,
Old Bangalore Road,
Hosur-635 109.

..Appellant/
2nd Respondent

/vs/

1.Sambu Chasha

2.Dhanushkodi

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 18.11.2014 made in M.C.O.P.No.337 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub Court), Hosur.

For Appellant :Mr.S.Arunkumar
For Respondents :M/s.Mukund R.Pandiyan [R1]

JUDGMENT

(Judgment of the Court made by T.MATHIVANAN,J.)

The award dated 18.11.2014 and made in the claim petition in M.C.O.P.No.337 of 2013 on the file of the Motor Accidents Claims Tribunal(Subordinate Judge), Hosur is under challenge in this memorandum of Civil Miscellaneous Appeal.

2.The second respondent/Insurance Company in the claim petition is the appellant herein whereas the first respondent is the claimant and the second respondent is the owner of the vehicle.

3.Heard Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company and Mr.Mukund R.Pandiyan, learned counsel appearing for the first respondent/claimant.

4.The first respondent/claim petitioner had moved the Motor Accidents Claims Tribunal(Subordinate Judge), Hosur with a claim petition in M.C.O.P.No.337 of 2013 claiming a sum of Rs.50,00,000/- for the injuries sustained by him in a road traffic accident said to have been taken place on 01.11.2012 at 2.30 p.m., opposite to Anand Electronics Company at Hosur to Krishnagiri Main Road (NH7), when the petitioner along with other person, who is the claimant in the claim petition in M.C.O.P.No.336 of 2013 were travelling as coolies-cum-representatives of goods in the Bajaj Tempo bearing Registration No.TN-59-M-4865 belonging to the second respondent herein.

5.It appears from the records that the claim petition filed by the first respondent/claimant herein and the claim petition in M.C.O.P.No.336 of 2013 filed by another injured were clubbed together and on a memorandum, common evidence was recorded in the claim petition in M.C.O.P.No.336 of 2013. In order to substantiate to their respective cases, the claim petitioner one Prakash in M.C.O.P.No.336 of 2013 was examined as P.W.1 whereas the first respondent/claimant herein was examined as P.W.2. Besides them, one Dr.Gandhi was also examined as P.W.3. During the course of their examination, Exs.P1 to P14 were marked. On the other hand, one Mr.M.Ravi, Senior Assistant of the appellant-Insurance Company was examined as R.W.1 and during the course of his examination, a copy of policy pertaining to the offending vehicle was marked as Ex.R1. On appreciation of evidence both oral and documentary, the Motor Accidents Claims Tribunal had proceeded to award a sum of Rs.4,33,000/- in favour of the claimant in M.C.O.P.No.336 of 2013. Insofar as the claim petition of the first respondent-claimant is concerned, the Tribunal had proceeded to award a sum of Rs.28,13,400/- directing the appellant-Insurance Company to pay the above said amount with interest at the rate of 7.5% from the date of petition within two months.

6.It is obvious to note here that the appellant-Insurance Company has not chosen to file any appeal as against the award passed in the claim petition in M.C.O.P.No.336 of 2013. However, the appellant-Insurance Company challenging the award of Rs.28,13,400/- and made in the claim petition in M.C.O.P.No.337 of 2013 has preferred the present Civil Miscellaneous Appeal only on the ground of quantum.

7.Mr.N.Arunkumar, learned counsel appearing for the appellant-Insurance Company has argued that as per the materials

available on record, the first respondent/claimant was working as a coolie at the relevant period and as such, he would not have earned Rs.10,000/- per month as spoken to by him in his evidence and that the Tribunal had infact gone wrong in fixing his monthly income at Rs.6,000/-. Apart from this, he has also attacked the disability certificate issued by P.W.3, Dr.Gandhi assessing the disability of the first respondent/claimant at 85%.

8.Secondly, he has argued that the Tribunal, without taking note of the fact that the alleged employment of the first respondent/claimant with private company was not permanent, had granted a sum of Rs.5,50,800/- towards future prospects without any basis and he therefore, has urged to delete this amount under the above head.

9.Thirdly, he would contend that the Tribunal had also erroneously awarded compensation under the following heads without any basis.

Attender, Nursing and	}	
Physiotherapy charges	}	---Rs.4,56,000/-
Pain and sufferings		---Rs.1,00,000/-
Future medical expenses		---Rs.1,00,000/-
Loss of family life		---Rs.2,00,000/-
Transportation		---Rs. 25,000/-
Nutrition		---Rs.1,00,000/-

10.But, on the other hand, Mr. Mukund R.Pandiyar, learned counsel appearing for the first respondent/claimant has submitted that due to the accident, the petitioner had sustained the following injuries:

- (i)T10 unstable burst fracture with paraplegia (complete cord injury)
- (ii)Multiple rib fractures.
- (iii)Normal motor power and sensations in both upper limbs. Grade 0 Power in both lower limbs. Sensation below T 10 level was reduced with no sensation below T12 level and absent perianal sensations. The bulbocavernous reflex was also absent. Abrasions were present over the lateral aspect of the left ankle. Air entry was equal in both sides of the chest but the chest wall was tender on compression.

11.The learned counsel appearing for the first respondent/claimant has also argued that soon after the accident, the petitioner was removed to Ashok Hospital at Hosur and thereafter, he was taken to SPARSH Hospital at Bangalore and he had been taking treatment from 01.11.2012 to 02.11.2012 as in-patient. The learned counsel has also argued that he had spent more than Rs.3,50,000/- towards medical treatment and besides this amount, for future follow up treatment he has to spend more than Rs.10,00,000/-. During the

course of his argument, he has also invited our attention to the disability certificate issued by P.W.3-Dr.Gandhi in favour of the first respondent/claimant in respect of his disability and apart from this, the learned counsel has also invited our attention to Ex.P13 and Ex.P14-X-Rays. In this connection, he would submit that the monthly income fixed by the Tribunal in respect of the first respondent-claimant was absolutely very lesser one and in fact, the Tribunal ought to have enhanced the compensation instead of granting a sum of Rs.28,13,400/- for the simple reason that the first respondent/claimant had lost sensation below hip and on account of this reason, he was not able to answer the call of nature without the help of the other person and he had been lying in vegetative state.

12.We have struck a balance between the submissions made by both the learned counsels and we have also meticulously analyzed the evidences both oral and documentary available on record. As argued by Mr.S.Arunkumar, learned counsel appearing for the appellant-Insurance company, the Tribunal has awarded a sum of Rs.5,50,800/- towards loss of 50% of future prospects and another sum of Rs.4,56,000/- towards attender, nursing and physiotherapy charges. Mr.S.Arunkumar has mainly projected his argument on these amounts and he therefore, has urged this Court to delete these two amounts viz., Rs.5,50,800 and Rs.4,56,000/-. But, Mr. Mukund R.Pandiyan, learned counsel appearing for the first respondent/claimant has strongly resisted to delete these amounts and urged to enhance the compensation.

13.Having regard to the related facts and circumstances, we find that while granting a sum of Rs.5,50,800/- being 50% of loss of future prospects, granting a sum of Rs.4,56,000/- under the head of attender, nursing and physiotherapy charges is fanciful and therefore, deserves to be discarded. Insofar as the remaining amounts are concerned, we do not want to interfere with the conclusion of the Tribunal and therefore, we find that these amounts may be allowed to remain undisturbed.

14.As above stated, after giving deduction to the above said amount of Rs.4,56,000/-, the remaining balance would be Rs.23,57,400/-. We therefore, find that this amount would be a just compensation and as such the appeal filed by the appellant-Insurance Company is liable to be allowed in part.

15.Accordingly, the Civil Miscellaneous Appeal preferred by the appellant-Insurance Company is partly allowed reducing the award to Rs.23,57,400/- from Rs.28,13,400/-. The appellant-Insurance Company shall deposit the reduced amount of Rs.23,57,400/- in the name of the first respondent-claimant with accrued interest at the rate of 7.5% p.a., from the date of petition in the Indian Bank, High Court Branch on or before 10.08.2015. No costs. Consequently, connected Miscellaneous Petition is also closed.

16.Post on 11.08.2015 for reporting compliance.

-Sd/-
Assistant Registrar(cs-II)

//True copy//

Sub Assistant Registrar

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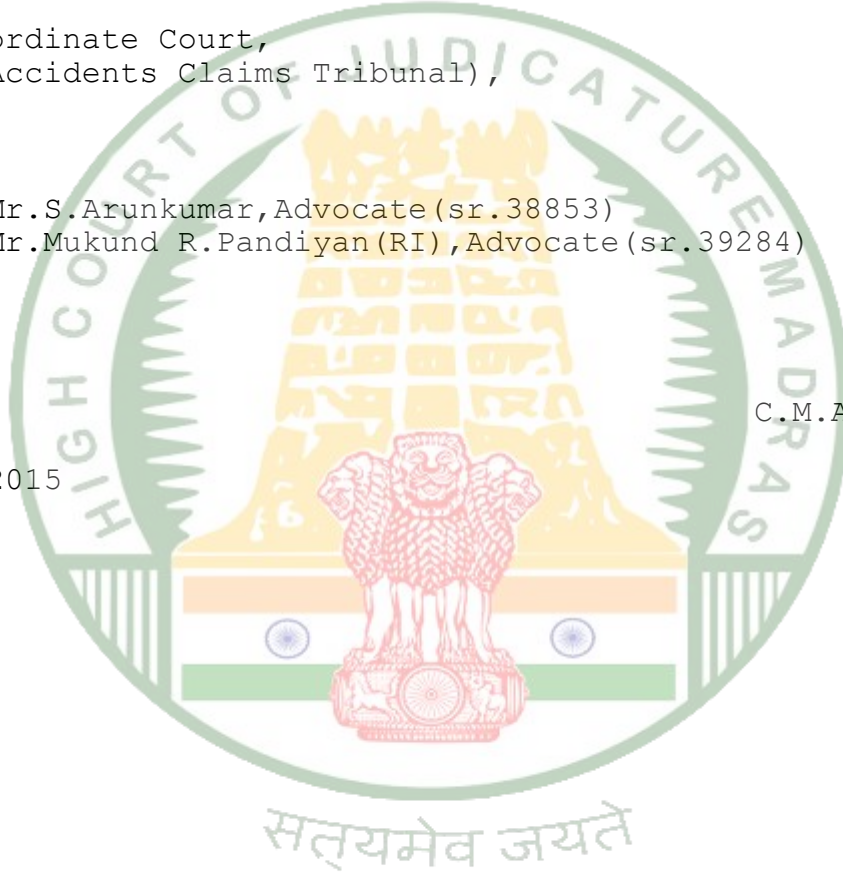
To

The Subordinate Court,
(Motor Accidents Claims Tribunal),
Hosur.

+1 cc to Mr.S.Arunkumar,Advocate (sr.38853)
+1 cc to Mr.Mukund R.Pandiyan(RI),Advocate (sr.39284)

KGK(co)
cp 26.08.2015

C.M.A.No.1396 of 2015



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