

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.07.2015

Coram:

The Hon'ble Mr. Justice N.KIRUBAKARAN

C.M.A.No.1405 of 2015
and M.P.No.1 of 2015

The Manager
IFFCO - TOKIO
General Insurance Company Ltd.,
No.28, 1st & 2nd Floors,
North Usman Road,
T.Nagar, Chennai - 600 070. ... Appellant /2nd Respondent

vs

1.R.Krishnamurthy ... 1st Respondent / Petitioner

2.SDB CISCO (India) Ltd.,
D.No.14, Avenue Road,
Nungambakkam,
Chennai - 600 034.
(set exparte in the trial court) ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the decree and judgment made in MCOP No.64/2009 dated 29.10.2012 on the file of the Motor Accident Claims Tribunal (Sub-Court), Thiruvallur.

For Appellant : Mr.C.R.Krishnamoorthy

सत्यमेव जयते
J U D G M E N T

The appeal has been preferred by the insurance company against the award of Rs.3,55,325/- as compensation for the injuries sustained by the first respondent/claimant in the accident occurred on 12.08.2008.

2. Mr.C.R.Krishnamoorthy, learned counsel appearing for the appellant/insurance company would challenge the fixing of liability as well as the quantum of compensation awarded by the tribunal in favour of the first respondent. He would submit that the two-wheeler in which the injured was travelling alone was the tort-feasor and there was no negligence on the part of the driver of the insured vehicle and therefore the liability fastened on the insurance company

has to be set aside. Secondly, he would submit that the amounts awarded towards compensation for the injury is also on the higher side.

3. The records produced before this court would reveal that the Bolero jeep insured with the appellant was coming from Pondicherry to Chennai travelling from South to North and the injured and his friend were standing in the eastern side of the ECR Road. Though it is contended that the two wheeler with three persons came in the wrong direction and hit the Bolero jeep, a perusal of the records would reveal that FIR was registered against the driver of the Bolero jeep. The evidence of RW2-driver of the Bolero vehicle was disbelieved by the tribunal rightly. RW2 deposed that the two wheeler came and hit the Bolero on the right side, relying upon Ex.P2-rough sketch which shows that the accident occurred on the eastern side, i.e. right side of the ECR Road while coming from Pondicherry to Chennai. If really the accident occurred as contended by RW2, the accident should have taken place on the western side of the ECR Road. If there was something wrong with the rider of the two-wheeler, the public assembled there would not have created problem with the driver of the Bolero jeep.

4. The very fact that the driver spread away from the scene of occurrence would reveal that there was something wrong on the part of the driver of the Bolero jeep which is also evident from Ex.P2-rough sketch. Moreover, eyewitness who gave police complaint has narrated the nature of accident which was rightly believed by the tribunal. Therefore, the finding reached by the tribunal that the driver of the Bolero jeep which has been insured with the appellant/insurance company alone was responsible for the accident cannot be set aside and the same is confirmed.

5. The claimant sustained comminuted fracture distal radius with intra articular extension and fracture of ulna styloid. Ortho fix application was done and ORIF distal radius was done on 21.08.2008 as proved by Ex.P6 -discharge summary. He was hospitalized in Kalyani Hospitals from 13.08.2008 to 19.08.2008. Again on 28.01.2010 to 30.01.2010. He was advised to walk with the support of walker. PW2-doctor, based on medical evidence and examining of the injured, issued Ex.P9-certificate which would show that the claimant sustained 85% disability. Because of the injuries, the claimant walks with limping gait with the stick and he suffers his post traumatic stiffness and restriction of range of movements.

6. As stated earlier by the second surgeon, the implants fixed were removed and therefore the tribunal rightly fixed the disability at 30% and awarded Rs.60,000/- by awarding Rs.2,000/- per percentage of disability. The said amount is very low and therefore this court enhances the same to Rs.90,000/- by awarding Rs.3,000/- per percentage of disability. Rs.7,000/- awarded towards extra

nourishment and attender charges is too low and the same is enhanced to Rs.25,000/-. Rs.2,40,325/- awarded towards medical expenses is based on Ex.P8-medical bills and hence the same is confirmed. Similarly, Rs.18,000/- awarded towards loss of income is also confirmed. However, Rs.20,000/- awarded towards pain & sufferings and Rs.10,000/- towards loss of amenities is low and the same is enhanced to Rs.30,000/- and Rs.25,000/- respectively. Thus, the award of Rs.3,55,325/- is enhanced to Rs.4,28,325/-, rounded off to Rs.4,25,000/-, break-up as follows -

(1) Disability	...	Rs. 90,000/-
(2) Extra nourishment & Attender charges	...	Rs. 25,000/-
(3) Medical expenses	...	Rs.2,40,325/-
(4) Loss of income	...	Rs. 18,000/-
(5) Pain & Sufferings	...	Rs. 30,000/-
(6) Loss of amenities	...	Rs. 25,000/-
Total	...	Rs.4,28,325/-

Rounded off to Rs.4,25,000/-.

The rate of interest awarded by the tribunal at 7% shall remain unaltered.

7. In the result, the Civil Miscellaneous Appeal is dismissed enhancing the compensation from Rs.3,55,325/- to Rs.4,25,000/- even in the absence of any appeal / cross appeal by the respondent/claimant, invoking Order 41 Rule 33, re-appreciating the evidence and applying correct law as on date in a endeavour to award a just compensation. No costs. Consequently, connected Miscellaneous Petition is closed.

8. The appellant is directed to deposit the entire amount awarded by this Court, alongwith interest and costs, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same.

9. Since the appeal has been dismissed at the admission stage itself and the enhancement is being made, the respondent/claimant may not be in a position to know the enhancement of compensation. Therefore, registry is directed to send a copy of

this order directly to the respondent/claimant, free of cost. The Tribunal is directed to collect the requisite court fee for the enhanced compensation from the respondent/claimant, within a period of two weeks from the date of receipt of a copy of the order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgr

To

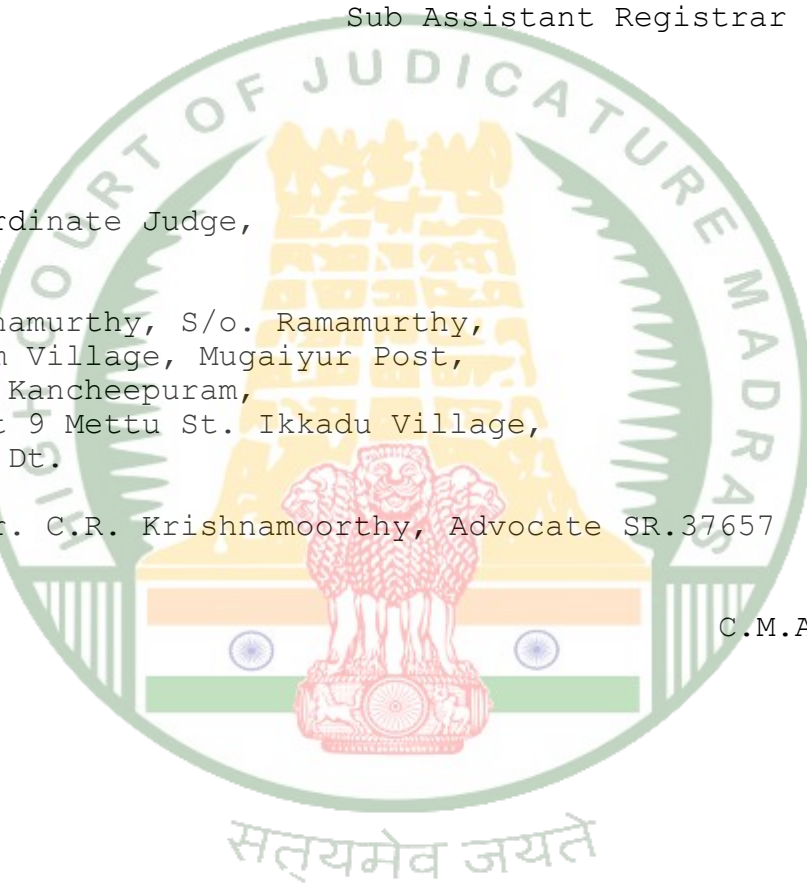
1. The Subordinate Judge,
Thiruvallur.

2. R. Krishnamurthy, S/o. Ramamurthy,
Vadapattinam Village, Mugaiyur Post,
Cheyyur TK. Kancheepuram,
Dt. Prsnt At 9 Mettu St. Ikkadu Village,
Thiruvallur Dt.

+ 1 cc to Mr. C.R. Krishnamoorthy, Advocate SR.37657

C.M.A.No.1405 of 2015

PUR (CO)
Eu 20.08.15



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