

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1859 of 2015

and

M.P.No.1 of 2015

The United India Insurance Co. Ltd.,
52, General Muthiah Mudali Street,
Chennai 600 079.

.... Appellant/2nd Respondent

Vs

1.Kesavan

2.J.Heseemabi

.... Respondents/Petitioner, 1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 31.03.2008 in MCOP.No.1503 of 2004 on the file of the Motor Accidents Claims Tribunal (Fast Track Court) Namakkal.

For Appellant : Mr.T.Ravichandran

For Respondents: Mr.Ma.P.Thangavel (for R1)

JUDGMENT

On 03.02.2004, at about 2.45 p.m., when the petitioner and a minor girl named Srijathi were travelling in a Car bearing Registration No.TN21-E-4962, on the Athur Main Road, the lorry bearing Registration No.TN27-Y-7245, coming on the opposite

direction and driven in a negligent manner, dashed against the car. As a result, the petitioner and the minor girl had sustained injuries. Both have filed separate claim petitions. The appeal arising from O.P.No.1503 of 2004 filed by the first respondent herein and claimed compensation of a sum of Rs.8,00,000/-. After contest, the Tribunal had awarded a sum of Rs.4,73,580/- with interest at the rate of 7.5% per annum. Against the said award, the above appeal has been filed by the Insurance Company.

2.The highly competent counsel Mr.T.Ravichandran appearing for the appellant submits that actually the accident had been committed by the petitioner as he has driven the car in a rash and negligent manner and dashed against the lorry. In the said accident, the petitioner had sustained simple injuries. The contentions regarding age, income, mode of treatment and medical expenses was also denied. The very competent counsel further submitted that the Doctor had assessed the disability at 58% in an arbitrary manner. The Tribunal also had adopted multiplier method and granted a sum of Rs.4,17,600/- under the head of disability which is not pertinent in the instant case since the claimant had sustained simple injuries. Further, the Tribunal had granted compensation under the head of medical expenses, without relevant records. In the said accident, contributory negligence has to be attributed. Hence, the highly competent counsel entreats the Court to set aside the award.

3.The learned counsel Mr.Ma.P.Thangavel, appearing for the claimant submits that the claimant had sustained multiple injuries in the said accident, which had been committed by the driver of the lorry. Hence, a criminal case had been levelled against the driver of the lorry. Therefore, the entire negligence has been fastened on the driver of lorry and the offending vehicle had been insured with the appellant herein and as such the appellant is liable to pay compensation. After the accident, the claimant had been admitted at Gokulam Hospital, Salem, wherein he had been treated as inpatient for a period of 10 days. Subsequently, he had undergone treatment as an outpatient. The claimant's age was 23 years and he was a driver by profession. In the said accident, he had sustained multiple bone fracture injuries and hence he is unable to do his occupation as a driver. The Doctor had certified that a surgical operation was conducted on the right thigh of the claimant and a steel plate was fixed in the operated area. Further, the claimant had lost his front teeth in his upper jaw.

Besides, the claimant had sustained bone fracture injuries on his lower jaw and hence he is unable to eat normally and unable to chew his food. Hence, the Doctor had certified that the claimant had sustained 58% disability. Hence, the Tribunal had adopted multiplier method. The very competent counsel further submits that the Tribunal had not granted adequate compensation under the heads of pain and suffering, nutrition, transport, attender charges, loss of earning during medical treatment period, loss of amenities and disfigurement. Hence, the very competent counsel entreats the Court to dismiss the above appeal.

4. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed set of papers, this Court is of the view that the Tribunal had adopted multiplier method and awarded compensation of a sum of Rs.4,17,600/- which is not appropriate. However, considering the nature of injuries, age and occupation of the claimant, the quantum of compensation is not on the higher side. This Court restructures the compensation as follows:-

Rs.1,16,000/- is awarded for disability; Rs.30,000/- for pain and suffering; Rs.38,980/- for medical expenses; Rs.10,000/- for nutrition; Rs.10,000/- for transport; Rs.10,000/- for attender charges; Rs.45,000/- for loss of earning during medical treatment period; Rs.2,14,000/- under the head of loss of amenities due to loss of teeth and disfigurement caused. Besides, the petitioner had sustained bone fracture injuries on his leg and as such he is unable to do his avocation as a driver. Hence, the award is confirmed.

5. The learned counsel for the appellant submits that the compensation amount has been deposited already. Therefore, now the claimant is at liberty to withdraw the entire compensation amount with accrued interest thereon lying in the credit of MCOP.No.1503 of 2004, on the file of Motor Accidents Claims Tribunal, Namakkal, after filing a memo, along with a copy of this order, subject to deduction of withdrawals, if any, already made by the claimant. This appeal has been disposed at the admission stage on the consent of the learned counsels on either side.

6. In the result, the above appeal is dismissed. Consequently, the order passed in M.C.O.P.No.1503 of 2004, on the file of the Motor Accidents Claims Tribunal (Fast Track

Court) Namakkal, dated 31.03.2008, is confirmed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

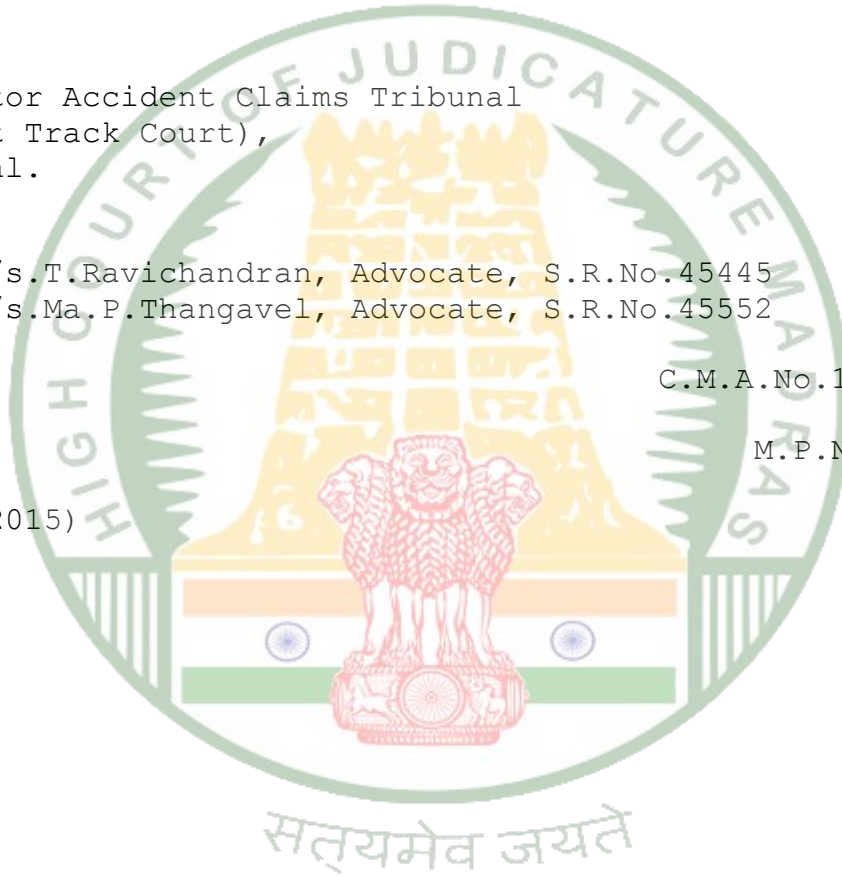
1. The Motor Accident Claims Tribunal
(Fast Track Court),
Namakkal.

+1cc to M/s.T.Ravichandran, Advocate, S.R.No.45445

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.45552

C.M.A.No.1859 of 2015
and
M.P.No.1 of 2015

UG(CO)
CA(04/11/2015)



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