

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NO.2596 OF 2015
& M.P.NO.1 OF 2015

Reliance General Insurance Company Limited,
Raj Towers, Block-2054,
II Avenue, II Floor,
Anna Nagar, Chennai - 600 040. ...Appellant/2nd Respondent

Versus

1.M.Kabilan ...1st Respondent/Petitioner
2.E.Ramesh Kumar ...2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 25.10.2013 made in M.C.O.P.No.5543 of 2011 on the file of the Motor Accidents Claims Tribunal, [V Court of Small Causes], Chennai.

For Appellant : Mr.S.Arun Kumar
For Respondent - 1 : Mr.V.Balamurugan
Respondent 2 : Set exparte before the Tribunal below

J U D G M E N T

This Civil Miscellaneous Appeal has been brought before this Court challenging the quantum of compensation fixed at Rs.9,52,100/- for the multiple injuries suffered by the claimant.

2.Learned counsel for the appellant assailing the reasoning given by the Tribunal in awarding the total compensation contended that the Tribunal having given Rs.1,00,000/- towards pain and suffering, has wrongly awarded another Rs.1,00,000/- towards loss of amenities. Adding further he would submit that again while fixing Rs.50,000/- towards future medical expenses also fixed interest thereon. Therefore, while awarding Rs.1,00,000/- towards loss of amenities and Rs.1,00,000/- towards pain and suffering, the Tribunal ought not to have awarded interest on the future medical expenses, namely,

Rs.50,000/-.

3.The learned counsel for the claimant would submit that the Tribunal, had considered the multiple injuries suffered by the claimant in the accident that happened on 10.03.2011 caused by the rash and negligent act on the part of the driver of the offending vehicle bearing Registration No.TN-28-AH-5897. It has also considered the fact that the claimant was admitted as inpatient and the operation dates, namely, 10.03.2011 to 21.05.2011; 25.08.2011; 02.09.2011 to 09.09.2011; 19.09.2011 to 29.09.2011; 03.02.2012 to 04.02.2012 and continued treatment as inpatient till 12.07.2012.

4.The claimant has established the injuries sustained by him due to the rash and negligent driving by the first respondent's vehicle driver. To support his case, he has also filed Ex.P.1, copy of the F.I.R. The driver of the Container Lorry bearing Registration No.TN-28-AH-5897 was not examined. Keeping in mind, there is no contra evidence produced against the evidence of P.W.1, it has accepted the evidence of P.W.1, therefore, it is a clear case of P.W.1 and Ex.P.1 that the accident had happened due to the rash and negligent driving of the first respondent's vehicle driver. Therefore, when the appellant does not even question the negligence on the part of the driver of the offending vehicle bearing Registration No.TN-28-AH-5897, it is not fair to question the award since the Tribunal has completely analysed that two Doctors have examined the claimant and assessed the disability at 90% as partial and permanent, which is also not questioned by the appellant. Therefore, when both Doctors have assessed the disability of 90%, without there being any basis, it is not open to file an appeal. However, learned counsel for the claimant has fairly submitted that he is not pressing the claim awarded by the Tribunal on two heads, namely, loss of amenities Rs.1,00,000/- and also interest on future medical expenses of Rs.50,000/-. I accept his statement.

5.Accordingly, recording his submission, this Court is inclined to modify the amount from Rs.9,52,100/- to Rs.8,02,100/- and the interest at the rate of 7.5% p.a. from the date of the petition, namely, 16.12.2011 till the date of deposit.

6.With this, the Civil Miscellaneous Appeal stands disposed of. However, there is no order as to costs. Consequently, connected M.P.No.1 of 2015 is closed.

7.The learned counsel for the appellant/Insurance Company fairly submits that he has deposited only Rs.25,000/-. Therefore, the appellant is directed to deposit the balance amount within a period of four weeks from the date of receipt of

a copy of this order. On such deposit, the claimant is entitled to withdraw the same, by moving an application before the Tribunal.

sd/-
Assistant Registrar (Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

sri

To

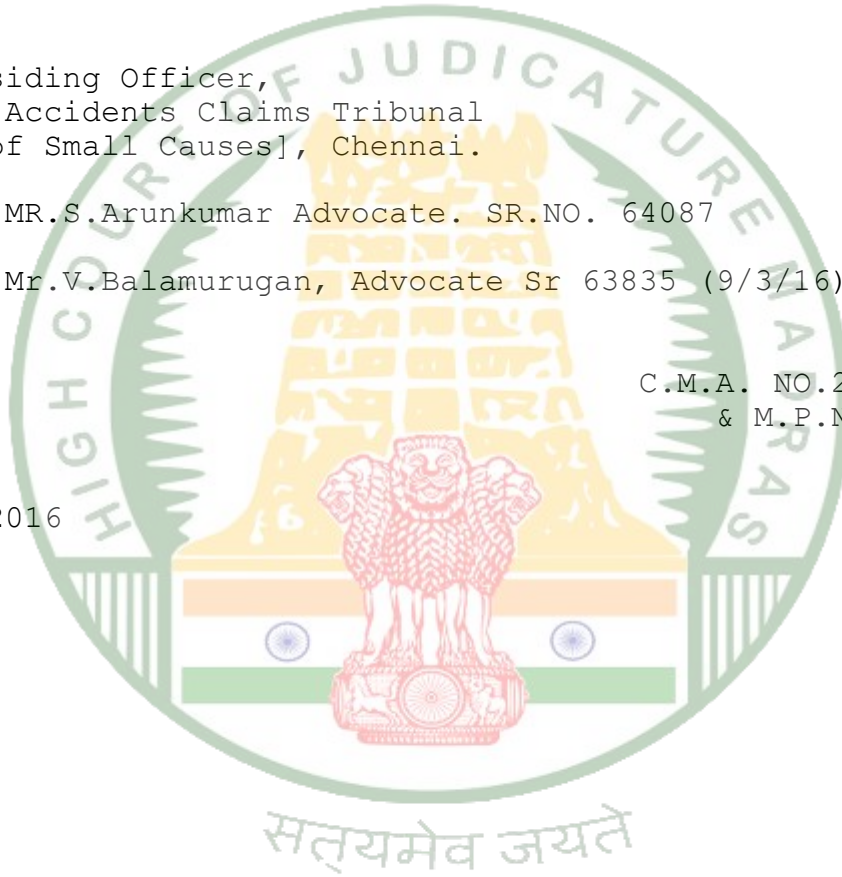
1.The Presiding Officer,
The Motor Accidents Claims Tribunal
[V Court of Small Causes], Chennai.

+ 1 CC to MR.S.Arunkumar Advocate. SR.NO. 64087

+ 1 cc to Mr.V.Balamurugan, Advocate Sr 63835 (9/3/16)

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