

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 394 of 2015

&

M.P. No. 1 of 2015

The Branch Manager,
National Insurance Company Limited,
Registered Office, No.3, Middleton Street,
Kolkatta - 700 071 and Branch Office at
SCO 96 Sector, No.16, Faridabad,
Haryana State. ..Appellant/2nd Respondent

Vs.

1. A. Lakshmanan ...Ist Respondent/Petitioner
2. M/s. Transway Cargo Lifters P Ltd.,
54, Sector, 16-A, Faridabad,
Haryana State. ...2nd Respondent/Ist Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 25.01.2008 passed in M.C.O.P. No. 97 of 2005 by the Motor Accidents Claims Tribunal (Sub Judge) at Sankari.

For Appellant :: Mr.K. Suryanarayanan

For Respondents :: Mr.R.Marudhachalamoorthy
for R1

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.6,01,731/- passed by the Motor Accidents Claims Tribunal (Sub Court), Sankari, for the injuries sustained by the 1st respondent/claimant in the accident, which occurred on 12.12.2004.

2. Heard Mr.K. Suryanarayanan, learned counsel for the appellant.

3. Learned counsel for the appellant would firstly contend that multiplier method adopted by the Tribunal for 21% disability is unwarranted. Secondly, he would submit that under two heads, amounts have been given towards "Pain and Suffering" and therefore, he seeks to aside the award.

4. A perusal of the records would show that the claimant sustained 5 fractures in the right leg and he underwent 5 surgeries as narrated by the Tribunal in paragraph No.9 of the award. Based on P.W.2's evidence, the Tribunal rightly determined the disability at 21%. Since the claimant, aged about 25 years, was employed as a driver, earning about Rs.6000/- per month, the Tribunal adopted multiplier method considering the seriousness of injuries sustained by him. Hence, the adoption of multiplier method cannot be found fault with and the sum of Rs.2,72,160/- awarded towards "Loss of Income due to disability" is justified. Though the sum of Rs.20,000/- awarded towards "Pain and Suffering" and the sum of Rs. 15,000/- awarded towards "Continuous Suffering" amount to double payment and same is unwarranted, considering the fact that the claimant sustained five fractures and underwent five surgeries, even the sum of Rs.35,000/- awarded by the Tribunal is too low and the same is enhanced to Rs.50,000/-, payable under the head "Pain and Suffering". The sum of Rs.10,000/- awarded towards "Extra Nourishment" is too low and the same is enhanced to Rs.40,000/-. Similarly, the sum of Rs.5000/- awarded towards "Transportation Charges" is very negligible and the same is enhanced to Rs.30,000/-. The sum of Rs.20,000/- awarded towards "Loss of Amenities" is enhanced to Rs.50,000/-, considering the injuries sustained and the disability suffered by the claimant. The sum of Rs. 2,23,571/- awarded by the Tribunal towards "Medical Expenses" as per Ex-P9 series is confirmed. So also, the sum of Rs.36,000/- awarded by the Tribunal towards "Loss of Income during treatment". Hence, the award of the Tribunal, to the tune of Rs. 6,01,731/- is enhanced to Rs.7,01,751/- rounded off to Rs. 7 lakhs. The rate of interest awarded by the Tribunal at 7.5% per annum stands unaltered.

5. Though the Insurance Company has filed the above appeal as against the award of Rs.6,01,731/-, considering the nature of injuries sustained by the claimant and that he underwent surgery five times, this Court, on re-appreciating the evidence on record and invoking Order XLI Rule 33 CPC, suo motu, has enhanced the compensation, even in the absence of any appeal/cross-appeal by the claimant.

6. The appellant is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a

copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire amount. The 1st respondent/claimant is directed to pay the appropriate court-fee for the enhanced amount, if any.

7. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal, to the tune of Rs.6,01,731/- is enhanced to Rs.7 lakhs. No costs. Connected M.P. is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

nv

To

The MACT (Sub Court), Sankari.

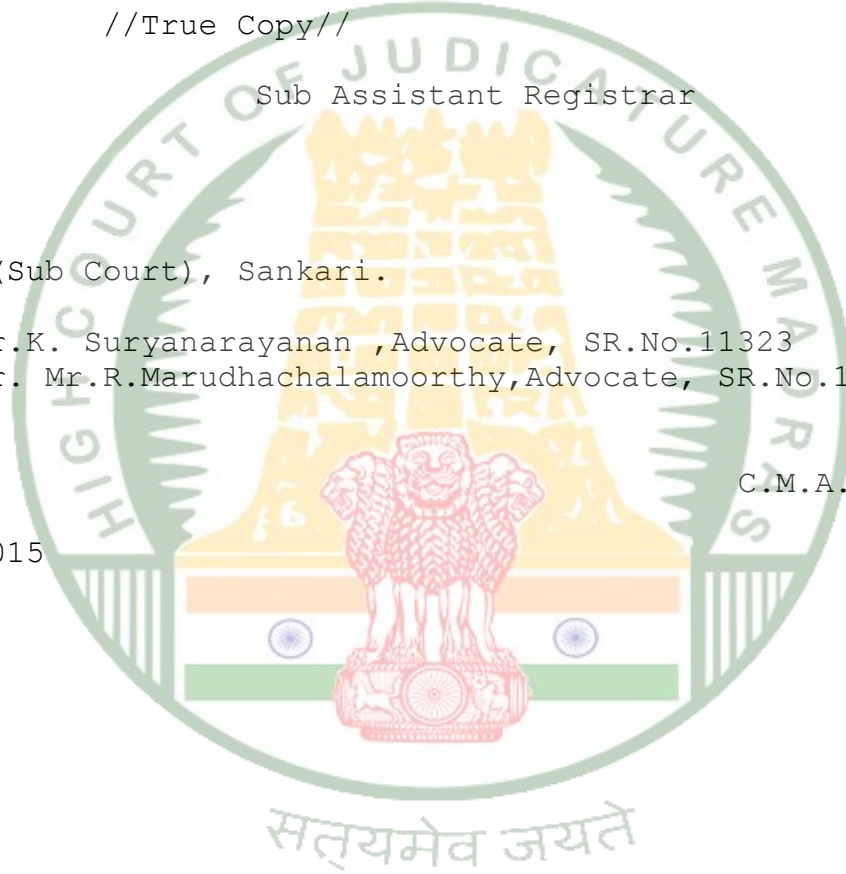
1 cc to Mr.K. Suryanarayanan , Advocate, SR.No.11323

1 cc to Mr. Mr.R.Marudhachalamoorthy, Advocate, SR.No.11500

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