

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.465 of 2015

and

M.P.No.1 of 2015

The Oriental Insurance Company Ltd.,
rep. by its Manager, Branch Office,
Sidhaveerappa Chetty Street,
Dharmapuri.

... Appellant/2nd Respondent

Vs.

1. Sakthi @ Sakthivelu

2. M.Selvi

3. The Managing Director,
TNSTC, No.37, Mettupalayam Road,
Coimbatore.

... Respondents/Petitioners
Respondents 1 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.10.2014 made in M.C.O.P.No.2121 of 2014 on the file of Motor Accident Claims Tribunal, (Special Sub Court), Dharmapuri.

For Appellant : Mr.S.Manohar

For Respondent : -

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of Rs.3,35,400/- for the injuries sustained by the first respondent/claimant, in the accident, which occurred on 27.08.2008.

2. Heard the learned counsel appearing for the appellant.

3. The only contention made by the learned counsel appearing for the appellant is that the adoption of multiplier method, calculating the loss of income is unwarranted as the disability is only 35% and it would not have caused any functional disability. However, a perusal of the records would show that the first respondent/claimant suffered the following injuries:

1. Fracture of left leg Tibia and Fibula
2. Multiple grievous injuries to right leg exposing muscles and blood.
3. Grievous injury to right hand
4. Grievous skin deep injury over head.
5. Multiple injuries all over body.

4. P.W.3 Doctor spoke about the injuries sustained by the claimant. There is a fracture of Tibia and Fibula of the left leg and surgery was done during which a steel rod was fixed inside and because of that there was restriction in the movement due to rigidity of muscles. Consequently, the first respondent/claimant is unable to stand, walk, squat on the floor, to climb upstairs for long time. Moreover, the claimant is a cleaner, with this injury, the cleaner may not be in a position to work normally, which he would have done before the accident. Moreover, the prospects of the cleaner to become a driver has got reduced, in view of the injuries where the use of legs for driving the vehicle is must. Therefore, applying of multiplier method for assessing the loss of income was rightly adopted by the Tribunal. Therefore, adoption of multiplier method cannot be found fault with.

5. As per Ex.P12 disability certificate and based on medical records, P.W.3 Doctor determined the disability at 45%. The Tribunal had fixed the disability at 35% and took Rs.4,000/- as monthly income and adopted multiplier 18, as per the age of the claimant and awarded Rs.3,02,400/- towards loss of income. The said amount is confirmed, though the monthly income determined at Rs.4,000/- is too low.

6. The other amounts namely, Rs.10,000/- towards pain and suffering, Rs.8,000/- towards loss of income during treatment period, Rs.5,000/- each towards medical expenses, transportation and extra-nourishment are all reasonable. Thus, the award of Rs.3,35,400/- along with interest at the rate of 7.5% p.a. is confirmed. Therefore, the civil miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected M.P. is closed.

7. The appellant Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% p.a with costs, within a period of four weeks from the date of receipt of a

copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the entire amount within one week.

8. It is made clear that the observation given by this Court is only limited to disposal of the appeal filed by the Insurance Company and it will not prohibit the claimant filing any appeal if he so advised.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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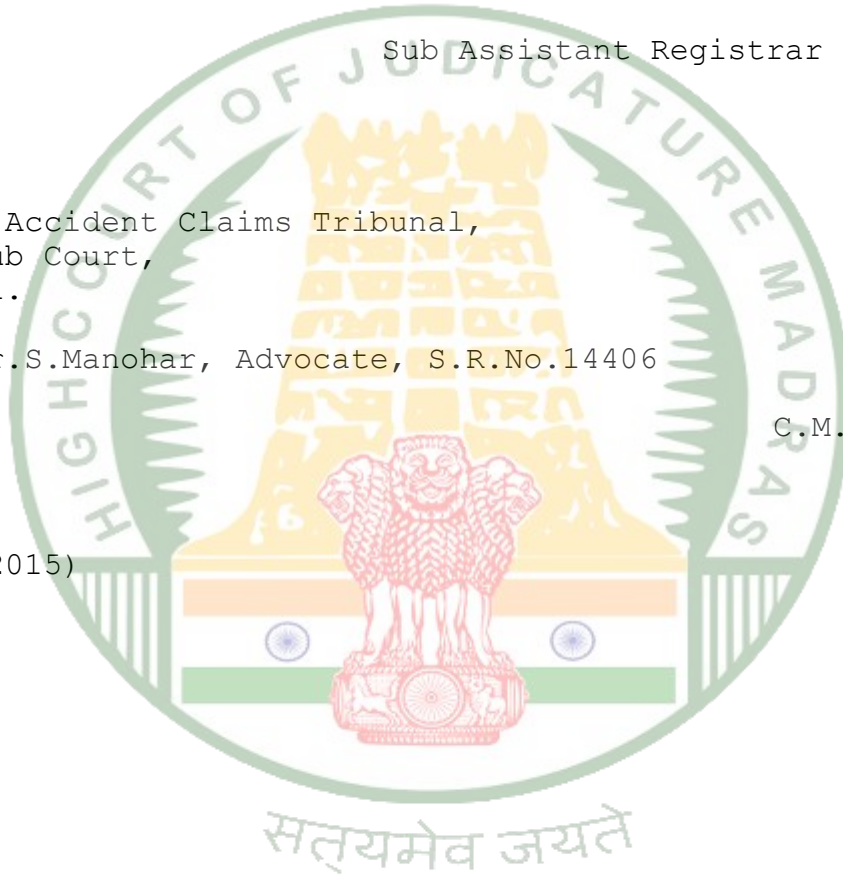
To

The Motor Accident Claims Tribunal,
Special Sub Court,
Dharmapuri.

+1cc to Mr.S.Manohar, Advocate, S.R.No.14406

C.M.A.NO.465 of 2015

TEJ(CO)
CA(08/04/2015)



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