

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.698 of 2014

M/s.United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai-1.

... Appellant/2nd Respondent

Vs.

1.M.Alagarsamy
2.Stalin

... Respondent/Petitioner and 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.07.2012 made in M.C.O.P.No.4183 of 2007 on the file of Motor Accident Claims Tribunal, (II Judge, Small Causes Court), Chennai.

For Appellant : Mr.J.Chandran

For 1st Respondents : Mr.P.K.Sabapathi

JUDGMENT

The Insurance Company has come before this Court, Challenging the award of Rs.6,04,000/- as compensation, for the injuries sustained by the first respondent/claimant, aged about 45 years, Head Constable, in the accident, which occurred on 04.07.2007.

2. Heard Mr.J.Chandran, learned counsel appearing for the appellant Insurance Company and Mr.P.K.Sabapathi, learned counsel appearing for the first respondent/claimant.

3. The learned counsel appearing for the appellant would submit that since the driver of the vehicle did not possess the driving

license at the time of accident, pay and recovery was ordered by the Tribunal and therefore, he does not want to canvass the liability issue. As far as quantum alone is concerned, according to him, it is on the higher side and higher, amount has been awarded towards loss of income. However, the learned counsel appearing for the first respondent/claimant would support the award of the Tribunal.

3. It is evident that the claimant is serving as Head Constable at the time of accident and because of the injuries, he did not lose the job and therefore, there is no question of loss of earning power and the amount of Rs.6,03,980/- awarded in that regard is unwarranted. The Tribunal miserably failed to look in to the matter properly, without considering the fact that the claimant is serving as Head Constable and there is no evidence to show that the claimant lost the job. When that is the position, it is not understandable, as to how the Tribunal can award such amount. Therefore Rs.4,72,680/- awarded by the Tribunal towards loss of earning power is hereby deleted.

4. Based on the evidence of P.W.2 Ophthalmology Doctor and other Doctors, namely, P.Ws.3 and 4, the Tribunal rightly determined the disability at 40% for the eye injuries, fracture of both bones, left forearm and fracture of right zygomatic condylar. Therefore, the said determination cannot be set aside. Though the Tribunal awarded a sum of Rs.80,000/- for 40% disability, in an endeavour to award just compensation, this Court awards a sum of Rs.3,000/- per percentage and awards Rs.1,20,000/-. Similarly, a sum of Rs.10,000/- awarded by the Tribunal towards pain and suffering is too low. Considering the number of fractures and also the eye injury sustained by the claimant, a sum of Rs.10,000/- awarded by the Tribunal towards pain and suffering is hereby enhanced to Rs.50,000/-. Further, the Tribunal awarded a sum of Rs.5,000/- towards extra-nourishment and the same is enhanced to Rs.20,000/-. A sum of Rs.5,000/- awarded towards transportation is hereby enhanced to Rs.10,000/-. The Tribunal awarded a sum of Rs.30,300/- towards loss of income during treatment period is unnecessary. As already stated, there is no loss of job. However, no amount was awarded towards loss of amenities and attender charges and therefore, a sum of Rs.20,000/- is awarded towards loss of amenities and a sum of Rs.10,000/- is awarded towards attender charges. Hence, the sum of Rs.6,03,980/- awarded by the Tribunal is hereby reduced to Rs.2,31,000/- along with interest at the rate of 7.5% p.a.

5. In the result, the civil miscellaneous appeal is partly allowed. Since the appellant has already deposited the entire award amount, the Tribunal is directed to permit the claimant to withdraw

the modified amount passed by this Court and the excess amount deposited by the appellant Insurance Company is directed to be paid to the appellant within one week. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rrg

To

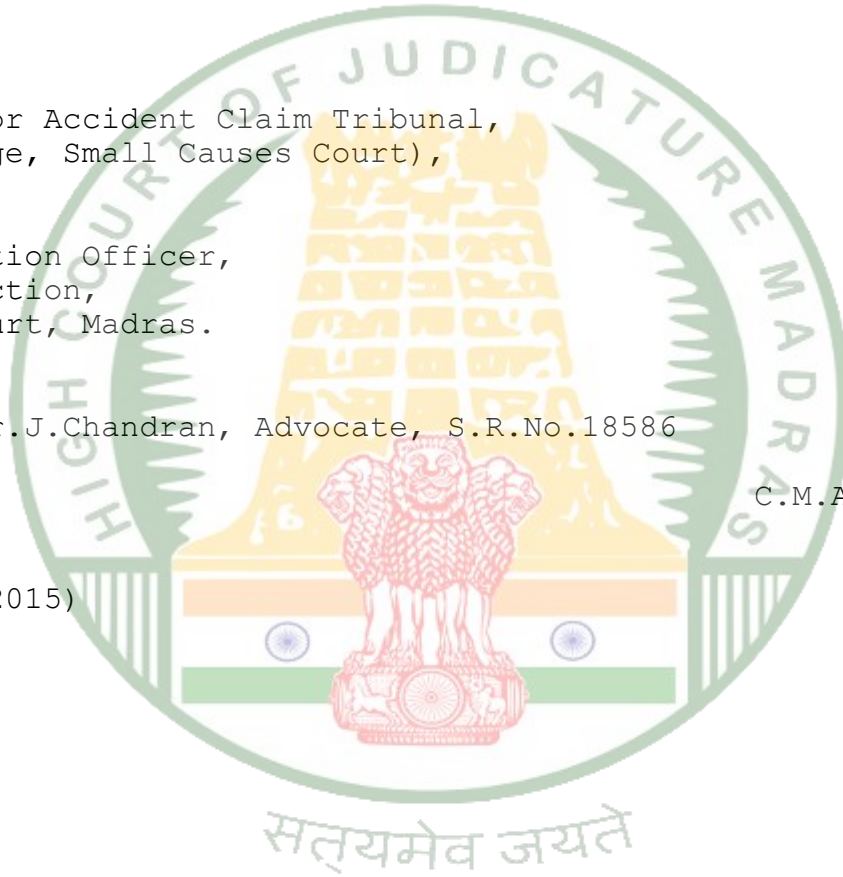
1.The Motor Accident Claim Tribunal,
(II Judge, Small Causes Court),
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.18586

C.M.A.NO.698 of 2014

AK(CO)
CA(09/04/2015)



WEB COPY