

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CMA No.2009 of 2010
and
M.P.No.1 of 2010

The Branch Manager
The New India Assurance Co.Ltd.,
No.12, New Hospital
Gobi 638 452.

... Appellant/2nd
Respondent

.Vs.

1. G.Mani
2. S.Duraisamy ... Respondents/Petitioners
[R-2 set exparte before the lower court] 1st Respondent

Appeal against the judgment and decree dated 21.08.2008
passed by the learned Additional District Judge, Fast Track
Court No.4, [Motor Accident Claims Tribunal], Coimbatore in MCOP
No.767 of 2005.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.S.S.Swaminathan for R1

J U D G M E N T

The New India Assurance Company Limited is the appellant.

2. The claimant/first respondent, who sustained grievous injuries in a road accident that took place on 28.06.2005 has filed a claim petition before the Court below claiming a compensation in a sum of Rs.5,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.3,14,380/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Questioning the quantum, the present appeal has been filed by the Insurance Company.

3. Heard both sides.

4. The learned counsel appearing for the appellant/ Insurance Company though initially argued that the Tribunal should have apportioned the liability in view of the negligence of the claimant in driving the vehicle in a rash and negligent manner, would fairly state that they are mainly aggrieved of the quantum determined by the Tribunal that too by adopting the multiplier method in the case of injury, which is unsustainable in law. In such circumstances, there is no need for us to go into the finding relating to negligence.

5. As per the judgment of this Court in the case of Royal Sundaram Alliance Insurance Co. Ltd., Chennai vs. R.M.Singaravadivel and others dated 24.08.2010 passed in C.M.A.No.1359 of 2007, this Court has to necessarily decide that it is against law. Further, in a case of injury, the court below ought not to have applied multiplier theory to determine the compensation amount as has been held by the Full Bench of this Court in (Cholan Roadways Corporation Limited vs. Ahmed Thambi) (2006) 4 CTC 433. Therefore, for determining the compensation amount, the court below ought to have granted a sum of Rs.1,000/- or Rs.2,000/- per percentage of disability which will be the correct method for computing the compensation amount, when there is no dispute with regard to the accident or the injuries sustained by the claimant. However, the Tribunal has adopted 17 multiplier and awarded the compensation.

6. On a perusal of the order passed by the Court below, it is seen that the claimant has suffered 27.5% permanent disability. It has further held that the claimant is a mason and was earning a sum of Rs.6,000/- per month. Therefore, the court below adopted the multiplier method and fixed the loss of income at Rs.2,57,040/- for the 27.5% disability suffered, which is not correct. In addition to the above, the court below has also awarded compensation towards pain and suffering in a sum of Rs.5,000/-; for extra nourishment a sum of Rs.5,000/-; damages to cloth - Rs.200/-; towards transport expenses a sum of Rs.1,800/- and towards medical expenses a sum of Rs.45,340/-, totalling to Rs.3,14,380/-.

7. Since as per the judgment of this Court [cited supra], the multiplier method should not have been adopted for the injury sustained, this Court is inclined to interfere with the award passed by the Tribunal.

8. On a perusal of the order passed by the Court below, it is seen that the accident is not disputed; further the claimant has also suffered grievous injury in his tibia and has taken treatment for more than 10 days as in-patient and thereafter also he has taken treatment continuously for more than five months after discharge from the hospital and the relevant documents have also been marked before the Tribunal. Hence, the claimant would have spent more towards his medical expenses. It is also seen that due to the accident he could not do his work and has suffered loss of income for more than one year. Further the compensation awarded towards pain and suffering is also very low. Accordingly, the compensation awarded by the Tribunal is modified to the following effect under different heads:

Loss of future prospects for one year [Rs.6,000 x 12] due to treatment	- Rs. 72,000/-
Pain and suffering	- Rs. 50,000/-
Permanent disability at 30% @ [Rs.2,000/- per percentage]	- Rs. 60,000/-
Medical expenses	- Rs. 50,000/-
Transport expenses	- Rs. 5,000/-
Extra Nourishment	- Rs. 5,000/-

Total	- Rs.2,42,000/-

Accordingly, the compensation awarded by the Tribunal in a sum of Rs.3,14,380/- is modified and a sum of Rs.2,42,000/- [Rupees two lakhs and forty two thousand only] is awarded as compensation to the first respondent/claimant. The award will carry interest at the rate of 7.5% from the date of petition.

9. It is submitted by the appellant-Insurance Company that as per the interim order passed by this Court dated 05.08.2010, the entire award amount as ordered by the Tribunal has already been deposited. In view of the said submission, the appellant-Insurance company is entitled to refund of excess amount deposited, if any. The first respondent/claimant is also entitled to withdraw the entire compensation amount along with interest on making out a proper application before the court below.

10. With the above modification, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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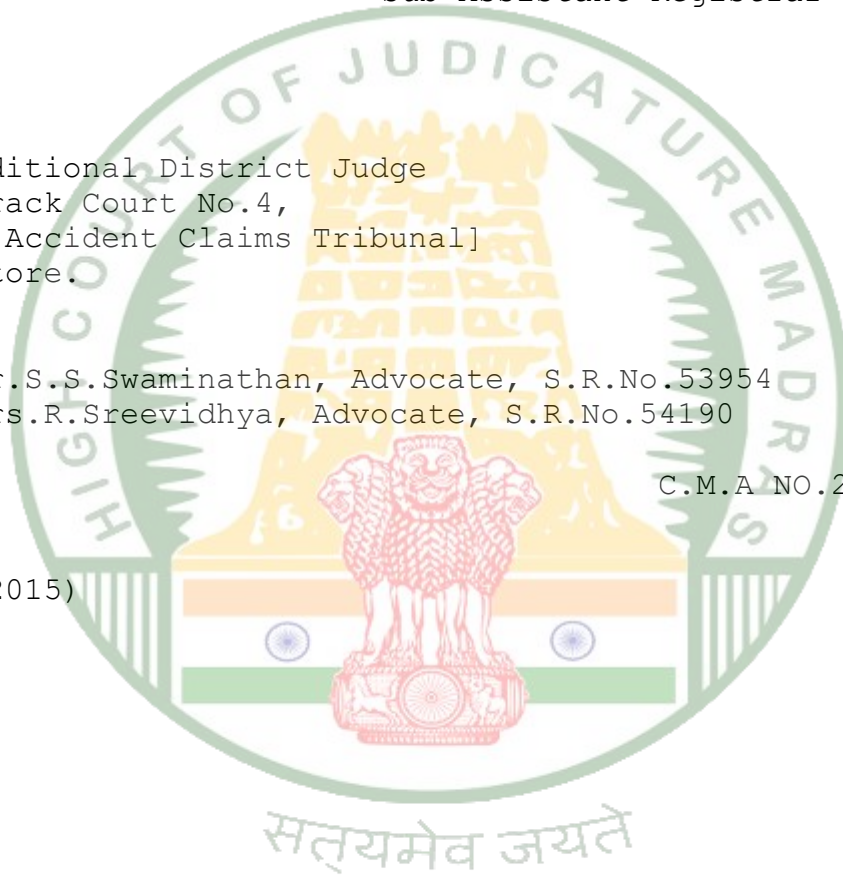
To

1. The Additional District Judge
Fast Track Court No.4,
[Motor Accident Claims Tribunal]
Coimbatore.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.53954
+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.54190

C.M.A NO.2009 of 2010

KK(CO)
CA(18/12/2015)



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