

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.10.2015
CAV ON:29.09.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2018 of 2013
and
M.P.No.1 of 2013

Order Reserved on 29.09.2015 Judgment Pronounced on 07.10.2015

The Oriental Insurance Company Limited,
No.6, Divisional Office,
364/1, 10B, Main Srinivasa Mansion,
Jaya Nagar, 3rd Block,
Bangalore.
Policy No.42160/31/2008/11600.

... Appellant/3rd respondent

vs

1.P.Yuvaraj
2.G.Thirupathi
3.R.A.Chandrasekar

... Respondents/Petitioner and
respondents 1&2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P.No.74 of 2009, dated 28.04.2012, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gobichettipalayam.

For Appellants : Mr.S.Arunkumar

For Respondents: Mr.Ma.Pa.Thangavel for R1

JUDGMENT

On 06.09.2008, at about 12.00 noon, when the claimant was driving the car bearing registration No.TN-56Y-1618, on the Gobi Main Road, the vehicle bearing registration No.KA-5228, driven by its driver in a rash and negligent manner dashed against the car. As a result, the claimant and his wife sustained injuries. Hence, the claimant has filed a separate claim petition against the owner and insurer of the offending vehicle.

2. The Insurance Company had filed a counter statement and resisted the claim petition. The respondent also denied the averments regarding nature of injuries, mode of treatment and disability. The respondent further submits that the claimant had committed the said accident without following traffic rules and dashed his car against the lorry. As such, the entire negligence rests on the side of the claimant. The owner and insurer of the car are necessary parties in the instant case but they have not been impleaded.

3. After recording the averments of both parties, the Tribunal had framed two issues. On the side of the claimant, two witnesses were examined and eleven documents were marked. On the side of the respondent, no evidence, no documents. After recording the evidence of the witnesses and on perusing the exhibits marked by the claimant, the Tribunal had awarded a sum of Rs.5,82,922/- as compensation, with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the above appeal.

4. The highly competent counsel, Mr.S.Arunkumar, appearing for the Insurance Company submits that in the said accident, two vehicles have been involved i.e., including the claimant's car. Therefore, the owner and insurer of the car are necessary parties in the proceedings but they have not been impleaded as necessary parties. As such the claim is not maintainable due to non-joinder of parties. The Tribunal had adopted multiplier method and awarded compensation under the head of disability which is not pertinent in the instant case. The Doctor had assessed the disability as 45% which is also on the higher side. Hence, the learned counsel entreats the Court to set aside the award passed by the Tribunal.

5. The very competent counsel Mr.Ma.Pa.Thangavel appearing for the claimant submits that the F.I.R has been levelled against the driver of the lorry since he had committed the accident in a rash and negligent manner. In the said accident, the claimant had sustained multiple bone fracture injuries and he had undergone medical treatment at a private hospital, wherein he was treated as inpatient for about one month. During medical treatment period, a surgical operation was conducted and a steel plate was fixed in the operated area. The claimant's right leg had been shortened by 1 ½". The medical expenditure amounts to a sum of Rs.1,59,122/- was incurred. Besides, future medical treatment is required to remove the steel plate from the operated area by way of re-operation. This was not considered by the trial Court. Hence, the learned counsel entreats the Court to dismiss the above appeal.

6. On considering the factual position of the case and arguments advanced by the learned counsel on both sides, this Court is of the view that as per F.I.R, it is seen that the accident had been committed by the driver of lorry. The same has been insured with the appellant herein. As per Doctor's evidence, the claimant had undergone a surgical operation and his right leg had been shortened by 1 ½". The Doctor had assessed the disability 45% and the fractured bone had been malunited. Further, the claimant had spent a sum of Rs.1,59,122/- towards medical expenses. Therefore, the quantum of compensation awarded is reasonable. However, the multiplier method adopted by the Tribunal is not appropriate. Hence, this Court restructures the compensation as follows:

Rs.90,000/- towards disability;
Rs.30,000/- towards pain and suffering;
Rs.15,000/- towards attender charges;
Rs.15,000/- towards nutrition;
Rs.15,000/- towards nutrition;
Rs.15,000/- towards transport;
Rs.30,000/- towards loss of earning during medical treatment period;
Rs.1,59,000/- towards medical expenses;
Rs.1,28,800/- towards loss of amenities and loss of comfort.
Since the claimant's right leg had been shortened by 1 1/2" which is permanent in nature and the claimant's age was 27 years. Hence, the award is confirmed. The rate of interest is unaltered.

7. This Court directs the Insurance Company to pay the entire compensation amount with accrued interest thereon from the date of filing the claim till date of payment of compensation as per the trial Court order within a period of six weeks from the date of receipt this order, after subtracting earlier deposits made by the appellant herein, as per this Courts interim direction. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon after filing a memo, along with a copy of this order.

8. In the result, the above appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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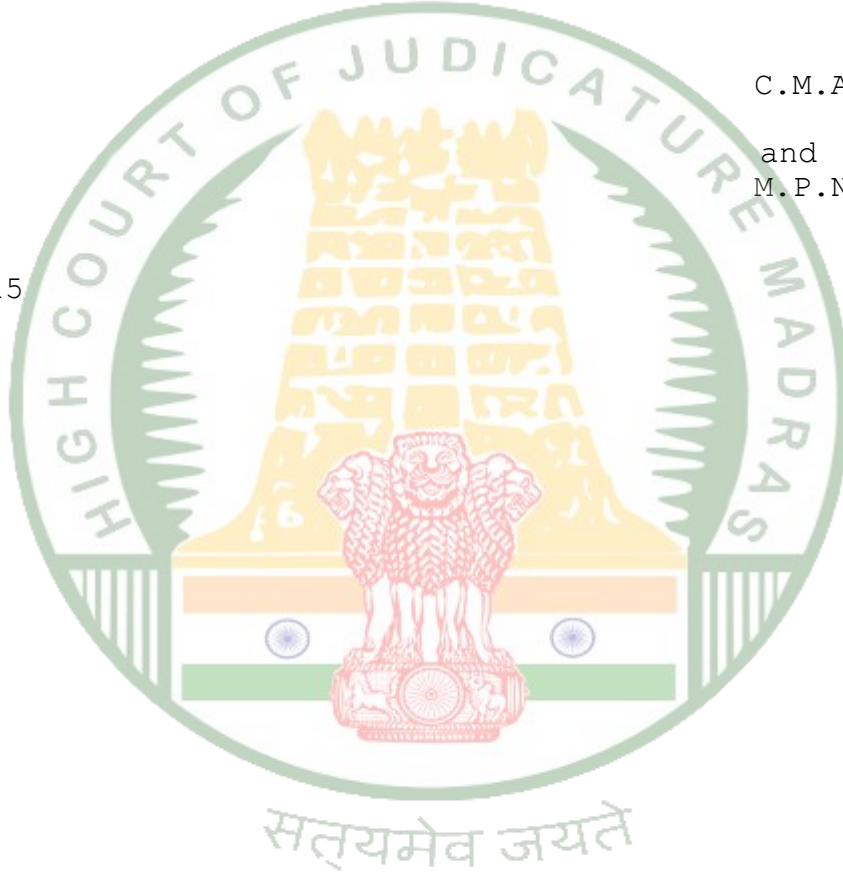
To

The Motor Accident Claims Tribunal,
Principal Subordinate Court, Gobichettipalayam.

+ 1 cc to Mr.S. Arunkumar, Advocate SR.54612
+ 1 cc to Mr.Ma.Pa. Thangavel, Advocate Sr.54661

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