

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.877 of 2013

and

M.P.No.1 of 2013

M/s.Royal Sundaram Alliance Company Limited,
Trichy.

... Appellant/2nd Respondent

Vs.

1.C.Chinnasamy

2.N.Soundarapandian

(2nd Respondent ex-parte in Lower Court)

... Respondents 1 & 2/

Petitioner/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.579 of 2009, dated 30.03.2012, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.2, Gobichettipalayam.

For Appellant : M/s.M.B.Gopalan

For Respondents : Mr.D.Selvaraja for R1
Ex-parte for R2

सत्यमेव जयते
J U D G M E N T

The short facts of the case are as follows:-

On 05.06.2009, at about 05.00 p.m., when the claimant was travelling in his car bearing registration No.TN-37Z-6212, on the Gobi Main Road, the van bearing registration No.TN-45-AC-4869, coming in the opposite direction and driven in a negligent manner, dashed against his car. As a result, he had sustained injuries. Hence, the claim has been levelled against the owner and insurer of the offending vehicle.

2. The Insurance Company has filed a counter statement and resisted the claim petition. The respondent submits that the accident had occurred due to negligent driving of the claimant. The contentions regarding age, income, occupation and nature of injuries was denied. Further, the driver of the van did not possess valid driving licence at the time of accident. Therefore, the Insurance Company is not liable to pay any compensation. Further, the driver of the van was under the influence of alcohol at the time of accident. In the said accident, two vehicles have been involved and as such contributory negligence has to be fastened.

3. After recording averments of both sides, the Tribunal had framed two issues namely: On the side of the claimant, two witnesses were examined and 14 documents were marked. On the side of the Insurance Company three witnesses were examined and eight documents were marked. After considering the oral and documentary evidence, the Tribunal had awarded a sum of Rs.6,01,256/- 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.M.B.Gopalan, appearing for the appellant submits that the Tribunal had awarded compensation of a sum of Rs.3,96,000 under the head of disability after adopting multiplier method, which is not appropriate. Further the Doctor had certified that the claimant had sustained 55% disability, which is on the higher side, since, the claimant had sustained simple injuries. The Tribunal had awarded compensation under the other heads, which are also on the higher side. Further, in the instant case, contributory negligence has to be fastened but the Tribunal has not discussed on this issue. Hence the very competent counsel entreats the Court to set aside the award.

5. The very competent counsel Mr.D.Selvarajan, appearing for the claimants submits that the driver of the van had driven it in a rash and negligent manner and dashed against the car. As a result, the claimant had sustained multiple bone fracture injuries. The claimant is a leading practicing lawyer and after the accident he is unable to do his Advocate profession. The claimant also is involved in agricultural operations. As such, he was getting multiple income. After the accident, he is unable to do his Advocate profession as well as agricultural operations. As a result, his earning capacity has been lost. The Doctor had assessed the disability at 55%. The claimant had spent a sum of Rs.1,55,256/- towards medical expenses. Further, the Tribunal

after considering all aspects passed the award on merits and hence there is no lacuna in the said award and decree. Hence, the very competent Counsel entreats the Court to dismiss the appeal.

6. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side, this Court is of the view that the Tribunal had adopted multiplier method and awarded compensation of a sum of Rs.3,96,000/- towards disability which is not appropriate. Therefore, this Court reassesses the compensation as follows: RS.1,65,000/- is awarded towards disability; Rs.1,55,256/- towards medical expenses; Rs.50,000/- towards pain and suffering; Rs.25,000/- towards attender charges; Rs.25,000/- towards nutrition; Rs.25,000/- towards transport; Rs.1,00,000/- under the head of loss of earning during medical treatment period; Rs.40,000/- under the head of loss of amenities and loss of comfort. In total, this Court awards Rs.5,85,256/- as compensation. The interest fixed by the Tribunal is confirmed.

7. This Court directed the Insurance Company to deposit the entire compensation amount and permitted the claimant to withdraw 50% of the deposited amount. Now, the claimant is permitted to withdraw the balance compensation amount with interest as per this Court findings after filing a memo along with a copy of this order before the Trial Court. Likewise, the Insurance Company is at liberty to withdraw the excess compensation with accrued interest thereon after filing a memo before the Trial Court. Hence, the above appeal is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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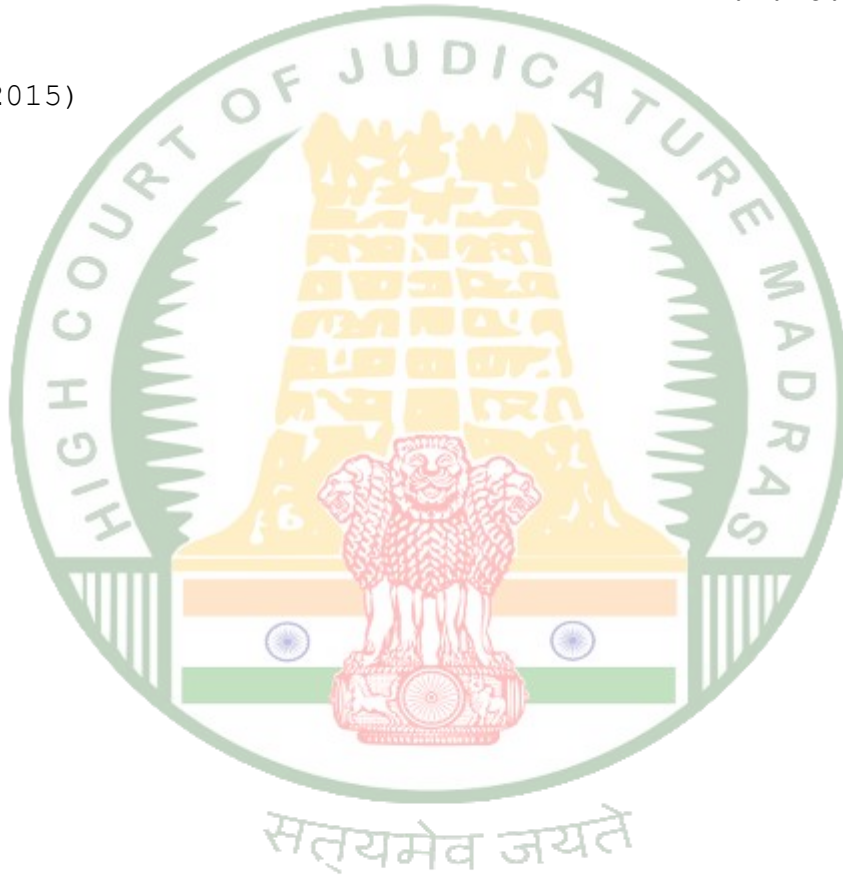
1.The Motor Accident Claims Tribunal,
Additional District Court,
Fast Track Court, Court No.2,
Gobichettipalayam.

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

+1cc to Mr.D.Selvaraja, Advocate, S.R.No.47451
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.48015

C.M.A.No.877 of 2013
&
M.P.No.1 of 2013

PUR (CO)
CA(15/10/2015)



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