

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26/08/2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.912 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
Royal Sundaram Alliance Insurance Company Limited,
No.8/H1, Mangalam Building,
4 Road, Salem. Appellant/2nd Responent.

Vs.

1.Rajagopal
2.Kandasamy

(2nd ^t responent herein remained ex-parte before the Tribunal,
hence summons to the 2nd responent herein may be dispensed with)

...Respondents/Petitioner/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicle Act, 1988, against the decree and judgment
dated 30.08.2012, made in M.C.O.P.No.1489 of 2010, on the file
of Motor Accident Claims Tribunal, II Additional District Court,
Tiruppur.

For Appellant : M/s.S.Manohar
For Respondents : Mr.Ma.Pa.Thangavel for R1
R2-exparte

J U D G M E N T

The short facts of the case are as follows:-

On 09.11.2010, at about 06.30 hours, when the claimant was
proceeding on his motorcycle bearing registration No.TN-37B1-
1410, on the Srinuvani Main Road, the van bearing registration
No.TN-28AC-3448, driven by its driver in a rash and negligent
manner dashed against the claimants vehicle. As a result, he
had sustained injuries. Hence, the claimant had levelled claim
petition against the owner and insurer of the offending vehicle
and claimed a sum of Rs.8,00,000/-.

2. The Insurance Company had filed counter statement and resisted the claim. Actually the petitioner had ridden his motorcycle in a rash and negligent manner and dashed against the 1st respondent's van. As such, the accident had been committed by the claimant. The respondent further denies the contentions about the age, income, occupation, mode of medical treatment etc.

3. After considering the averments of both sides, the Tribunal had framed three issues. On the side of the claimant, three witnesses were examined and seven documents were marked. On the side of the Insurance Company, one witness was examined and one document was marked. The Tribunal had recorded the evidence of both sides and after scrutinizing the documents marked had granted compensation of Rs.5,86,900/- in total, out of which 65% has been fastened on the side of the Insurance Company. As such, the Insurance Company is liable to pay a sum of Rs.3,81,485/- with interest at the rate of 7.5% per annum.

4. Aggrieved by the said award, the Insurance Company has filed the above appeal. The highly competent counsel Mr.S.Manohar, appearing for the appellant submits that the claimant had committed the said accident in a negligent manner and hence a criminal case had been levelled. Subsequently, the Investigation Officer attached to the traffic investigation wing had filed a charge sheet against the claimant. The same had been marked before the Tribunal and the negligence was established against the claimant. As such, the Insurance Company is not liable to pay any compensation to the claimant. The claimant has sustained simple injuries but the Doctor had assessed the disability at 48% which is on the higher side. Besides, the Tribunal had adopted multiplier method and granted compensation of a sum of Rs.5,04,900/- under the head of Disability which is not appropriate. Hence, the very competent counsel entreats the Court to set aside the award.

5. The learned counsel, Mr.Ma.Pa.Thangavel, appearing for the claimant submits that the Investigation Officer wrongly registered a criminal case against the claimant. After preparing a charge sheet, the Criminal Proceedings has not been proceeded with. As such, the question of negligence does not arise. However, the negligence has been apportioned appropriately 65% liability has been fastened on the Insurance Company. The claimant has sustained multiple bone fracture injuries, which has been classified as Grade II fracture. The claimant has sustained bone fracture injuries on his hand joint. A surgical operation was conducted. The left hand had been shortened by 2.5 cms. The operated area appears to be swollen. Hence, the Doctor has certified that the claimant had sustained 48% disability. However, the Tribunal, Suo Moto had reduced the disability to 45%. A steel plate was fixed in the operated area

of the left hand and the claimant's two teeth on his lower jaw were broken and he had sustained injuries on his lip, forehead and chin. The age of the claimant is about 23 years and he is an Archagar by profession. The Tribunal had not granted compensation under the relevant heads of attender charges, loss of earning during medical treatment period and loss of amenities. Besides, the claimant is entitled to receive compensation under the head of disfigurement. Therefore, the highly competent counsel entreats the Court to dismiss the above appeal.

6. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is the view that the contributory negligence fixed by the Tribunal is an appropriate one, since both vehicles are involved in the accident. Further, the claimant had sustained multiple bone fracture injuries and he had undergone a surgical operation on his left hand and a steel plate had been fixed in the operated area. Besides, the claimants teeth in his lower jaw had been broken and the lip in lower jaw, forehead, cheek had been injured. As such the claimant's face has been disfigured. Hence, the quantum of compensation is not on the higher side. However, the multiplier method adopted by the Tribunal is not appropriate. Hence, this Court restructures compensation as follows: Rs.96,000/- towards Disability; Rs.12,500/- towards Medical Expenses; Rs.30,000/- towards Pain and Suffering; Rs.10,000/- towards Transport; Rs.10,000/- towards Nutrition; Rs.10,000/- towards Attender Charges; Rs.30,000/- towards Loss of Earning During Medical Treatment period; Rs.1,82,985/- towards Loss of Amenities, Disfigurement as the claimants age was 23 years at the time of accident. Accordingly, the quantum of compensation awarded by the Tribunal is confirmed.

7. At the time of admission, this Court directed the appellant to deposit 50% of the award amount with accrued interest, less the amount already deposited. Now, this Court directs the appellant to deposit the rest of the compensation amount, with accrued interest thereon as per the Tribunal order, within a period of six weeks from the date of receipt of a copy of this order. After such deposit has been 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. Hence, the above appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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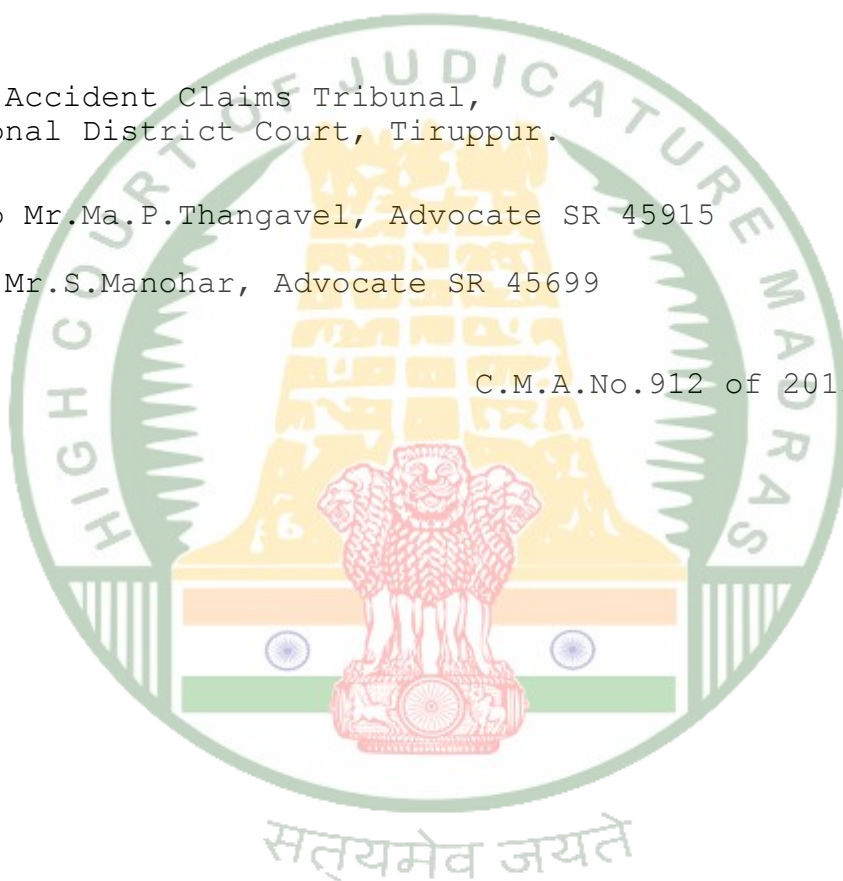
The Motor Accident Claims Tribunal,
II Additional District Court, Tiruppur.

+ 1 cc to Mr.Ma.P.Thangavel, Advocate SR 45915

+ 1 cc to Mr.S.Manohar, Advocate SR 45699

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