

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.163 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s. New India Assurance Co. Ltd.,
No.45, Moore Street,
N.No.16, Old No.15,
Chennai 600 001 ... Appellant/II Respondent

vs.

1.N.Punniyakotteswaran ...1st respondent/petitioner
2. Sundaramoorthy ...Respondent 2/respondent 1

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 08.04.2014 passed in M.C.O.P.No.4444 of 2011 on the file of the Motor Accidents Claims Tribunal (Small Causes Court III Judge), Chennai.

For appellant : Mr.J.Chandran

For respondents : Mr.K.V.Muthuvisakan (R1)
R2 served, no appearance

JUDGEMENT

(Judgment of the court was delivered by R.SUDHAKAR,J.

This Civil Miscellaneous Appeal is filed by the Insurance Company seeking reduction in compensation granted to a 51 years old driver, by Judgment and decree dated 08.04.2014 passed in M.C.O.P.No.4444 of 2011 on the file of the Motor Accidents Claims Tribunal (Small Causes Court III Judge), Chennai.

2. It is a case of injury. The brief facts of the case of the claimant is that on 7.8.2011 at 21.15 hours, while he was

riding a motorcycle bearing Regn. No.TN.01-S-3424 at New Avadi Road, opposite to Mathina Mosque and proceeding from west to east, a car bearing Registration No.TN 07-AR-4935, which was driven by its driver in a rash and negligent manner from the opposite direction, dashed against the claimant, thereby, he sustained grievous injuries. The driver of the car is responsible for the said accident. Hence, claiming compensation to the tune of Rs.16,00,000/-, the claimant preferred a claim petition in M.C.O.P.No.4444 of 2011 on the file of the Motor Accidents Claims Tribunal (Small Causes Court III Judge), Chennai.

3. In support of the claim petition, the injured was examined as P.W.1 and one Dr.Saichandran was examined as P.W.2. Documents Ex.P1 to P19 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Attested copy of the FIR in Cr.No.410/2011
P2	Discharge summary issued by KMC Hospital
P3	Discharge summary issued by MR Hospital
P4	Discharge summary issued by MR Hospital
P5	Discharge summary issued by M.N.Orthopaedic Hospital
P6	Discharge summary issued by Dr.Metha's Hospital
P7	Discharge summary issued by M.N.Orthopaedic Hospital
P8	Discharge summary issued by Vasanthi Orthopaedic hospital
P9	Discharge summary issued by Vasanthi Orthopaedic hospital
P10	Discharge summary issued by Vasanthi Orthopaedic hospital
P11	Hospital bills
P12	Medical bills
P13	Prescriptions
P14	Continuous treatment record
P15	Copy of driving licence
P16	Photos with CD
P 17	X-ray
P 18	Disability certificate

Ex.No.	Details
P19	X-ray

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal.

4. The Tribunal, based on oral and documentary evidence on record, held that the accident was due to the rash and negligent driving on the part of the driver of the 2nd respondent's vehicle and therefore, the appellant Insurance Company is liable to compensate the claimant.

5. As far as the quantum of compensation is concerned, the Tribunal granted the following amount as compensation with interest at the rate of 7.5% p.a.

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of Income	Rs.1,35,000/-
2	Extra Nourishment	Rs. 25,000/-
3	Damage to clothing	Rs. 1,000/-
4	Medical expenses	Rs. 4,00,000/-
5	Attender charges	Rs. 30,000/-
6	Loss of amenities of life	Rs. 50,000/-
7	pain and sufferings	Rs. 75,000/-
8	Permanent disability	Rs. 1,20,000/-
9	Loss of earning power	Rs. 3,96,000/-
	Total	Rs.12,67,000/-

Challenging the same, the Insurance Company has come before this Court.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The accident, in this case, happened on 07.08.2011. In the said accident, the claimant, who is 51 years old, sustained multiple injuries and he was treated at various hospitals at various spells from 8.8.2011 to 02.03.2013, which were evidenced by marking Exs.P2 to P10, discharge summaries issued by hospitals. The Tribunal based on evidence and the disability certificate Ex.P.18, has fixed the disability for loss of earning power at 40%.

8. The appellant's counsel pleaded that the driving licence has not been cancelled or surrendered and hence there cannot be 100% disability and there is no record to show that there is total disability for earning power. The Tribunal has granted compensation by adopting multiplier method. Further, the Tribunal has erroneously granted a sum of Rs.1,20,000/- towards permanent disability and also higher compensation as loss of income during the period under treatment by fixing the income at Rs.7,500/-. Hence, the compensation awarded under the heading Permanent disability has to be deleted.

9. As regards the plea with respect to medical expenses, we are not inclined to accept the same. However, we find much force in the argument of the learned counsel for the Insurance Company that while the compensation was granted for loss of earning power by adopting the multiplier method, the Tribunal ought not to have given compensation separately for permanent disability. Hence, the compensation of a sum of Rs.1,20,000/- awarded under the head permanent disability cannot be justified. However, the compensation of a sum of Rs.1,35,000/- for loss of income was given only for the treatment period i.e., for two years, which were supported by Exs.P-2 to P-10, which cannot be said to be excessive. Hence, we are not inclined to interfere with the same. As far as the compensation awarded under the other heads are concerned, we do not find any reason to interfere with the same.

10. Thus the award of the tribunal is modified as follows:-

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of Income	Rs.1,35,000/-	Rs.1,35,000/-
2	Extra Nourishment	Rs. 25,000/-	Rs. 25,000/-
3	Damage to clothing	Rs. 1,000/-	Rs. 1,000/-
4	Medical expenses	Rs. 4,00,000/-	Rs. 4,00,000/-
5	Attender charges	Rs. 30,000/-	Rs. 30,000/-
6	Loss of amenities of life	Rs. 50,000/-	Rs. 50,000/-
7	pain and sufferings	Rs. 75,000/-	Rs. 75,000/-
8	Permanent disability	Rs. 1,20,000/-	Nil

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this court
9	Loss of earning power	Rs. 3,96,000/-	Rs. 3,96,000/-
	Total	Rs.12,67,000 /-	Rs.11,47,000/-

Since there is no dispute with regard to interest, the interest granted by the Tribunal at 7.5% is confirmed.

11. In the result, the civil miscellaneous appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.11,47,000/- from Rs.12,67,000/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) The appellant/Insurance Company is directed to deposit the entire award amount as ordered by this Court less the amount already deposited if any, to the credit of M.C.O.P.No.4444 of 2011 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

There will be no order as to costs in this appeal. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

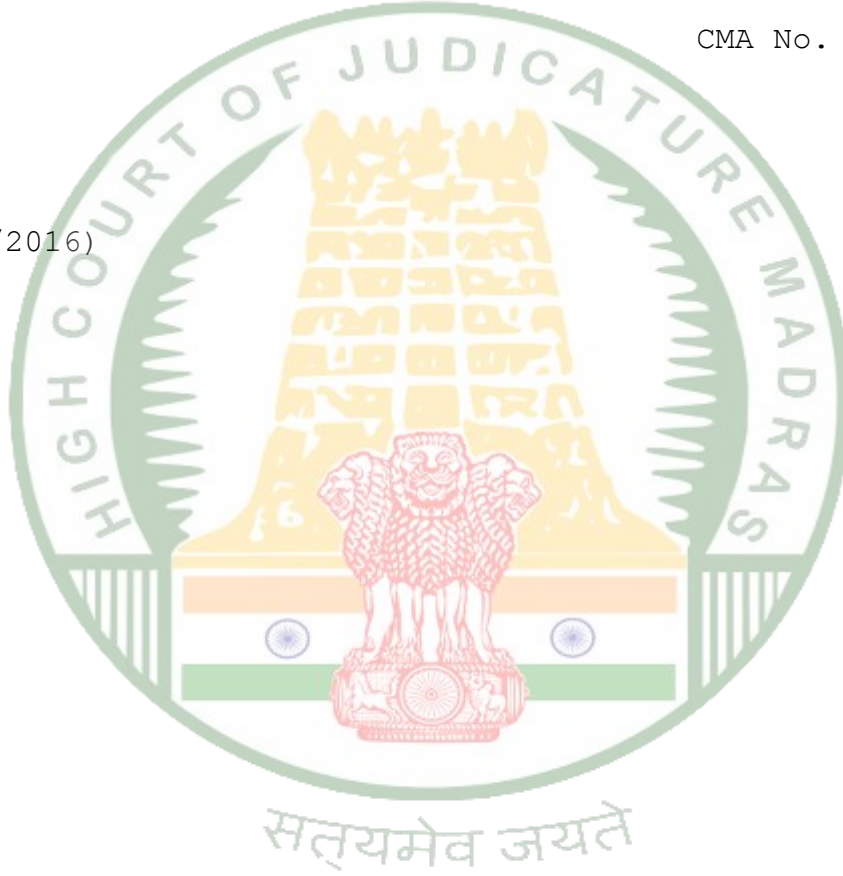
1.The III Judge,
Motor Accidents Claims Tribunal,
(Small Causes Court III), Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras

+1cc to Mr.K.V.Muthu Visakan, Advocate sr.12425

CMA No. 163 of 2015

jv(CO)
srg(11/03/2016)



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