

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1836 of 2016

Shriram General Insurance Co. Ltd.,
10003-E-8, RIICO Industrial Area,
Sita Pura, Jaipur, - 302 022.

.. Appellant

Vs

1.Goopalliyappa
2.K.K.Muniyappan

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20.07.2015, made in MCOP No.329 of 2013 on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur.

For appellant : Mr.S.Dhakshnamoorthy
For R1 : Mr.Mukund R Pandian
(Caveator)

JUDGMENT

This appeal is filed against the judgment and decree dated 20.07.2015, made in MCOP No.329 of 2013, on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur.

2. On 07.04.2013 at about 16.15 hours, while the first respondent/claimant was travelling as a pillion rider in a TVS Victor Motor Cycle bearing Registration No.TN-24-N-8231 from Nandhimangalam to Hosur, a TATA 407 bearing Registration No.KA-05-AC-6869 belonging to the second respondent and insured with the appellant insurance company, driven by its driver in a rash and negligent manner, dashed against the said motor cycle, as a result, the claimant sustained injuries all over his body and thereafter, he was immediately admitted in a Government Hospital, Hosur, for first-aid and thereafter, for better treatment, he was taken to Ashok Hospital, Hosur, where he took treatment from 07.04.2013 to 13.04.2013 as inpatient. The claimant has filed a claim petition claiming a sum of Rs.10,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the second

respondent and awarded a sum of Rs.7,14,000/- with interest at 7.5% per annum. Aggrieved by the same, the appellant-Insurance Company has filed the present appeal.

4. Learned counsel appearing for the appellant/Insurance Company mainly questioned the compensation awarded under the heads of loss of earning capacity by adopting multiplier method and the compensation awarded towards pain and suffering, since the claimant was admitted in the hospital only for a period of six days as inpatient for the injuries suffered by him. Besides, the claimant did not file any proof for taking continuous treatment. While so, the Tribunal, without looking into any of these aspects, has wrongly awarded a sum of Rs.5,46,000/- towards loss of earning capacity that too by adopting multiplier method and it has further awarded a sum of Rs.75,000/- towards pain and suffering. On these counts, learned counsel for the appellant Insurance Company sought for modification of the compensation arrived by the Tribunal.

5. Learned counsel appearing for the first respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the award passed by the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. This Court hardly finds any merit on the submissions made by the learned counsel for the appellant-Insurance Company. It is seen from the materials available on record that the claimant, who is working as a tiles mason, has suffered the following grave hardships due to the grievous injuries suffered by him on the fateful day i.e on 07.04.2013 at about 16.15 hours, which occurred while the claimant was riding in a motor cycle as pillion rider, the driver of the TATA 407 vehicle belonging to the second respondent and insured with the appellant Insurance Company, dashed against the said vehicle, which ultimately caused grievous injuries to the claimant:

- i. Grade II open type fracture of both bones and right leg.
- ii. Fracture of Tibial Condyle + Schatzker Type II

For the above said injuries, he was diagnosed as Grade II open type fracture of bones right leg and CRIF with internal fixation with interlocking plate with cancellous screw fixation with washer was done in the Ashok Hospital, Hosur, under Spinal Anesthesia. He was also treated with IV antibiotics, analgesics and other supportive drives. By analysing all these injuries suffered by the claimant, P.W.3-doctor assessed the disability at 60%, however, the Tribunal reduced the same to 50% and

thereafter, by considering the Ex.P9-disability certificate and Ex.P10-X-ray, and also by taking note of the injuries suffered by him as stated above, the Tribunal has adopted multiplier method and thereby, since the claimant was aged about 41 years at the time accident, it has adopted multiplier '14' as per the judgment of the Hon'ble Supreme Court in Sarla Verma vs. Delhi Transport Corporation and others (2009 (2) TNMAC(1) SC). The Tribunal has also fixed his monthly income at Rs.6,500/- per month. Therefore, this Court does not interfere with such a well reasonable amount fixed by the Tribunal, for, going by the present state of economy and the rising prices, I am inclined to believe that a tiles mason/claimant is capable of earning Rs.6500 per month. Finally, the Tribunal has awarded a sum of Rs.5,46,000/- (6500x12x14x50%) towards loss of earning capacity, which, in my view, is a just and reasonable compensation and therefore, the same is hereby confirmed.

8. The Tribunal has also awarded a sum of Rs.75,000/- towards pain and suffering, which is also a just and reasonable compensation for the injuries suffered by him, for, as stated above, due to the fracture of right leg both bones and right knee, he is unable to sit, stand or walk freely and unable to stand for long time, apart from the fact of fixation of interlocking plate with cancellous screw. Therefore, this Court does not find any merit in the appeal filed by the appellant insurance company to modify the compensation awarded by the Tribunal.

9. In fine, the Civil Miscellaneous Appeal is dismissed. The appellant- Insurance Company is directed to deposit the entire award amount of Rs.7,14,000/- to the credit of MCOP No.329 of 2013, on the file of the Sub-Court, Hosur, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount along with the accrued interest therein, by moving appropriate application. No Costs. CMP.No.13492 of 2016 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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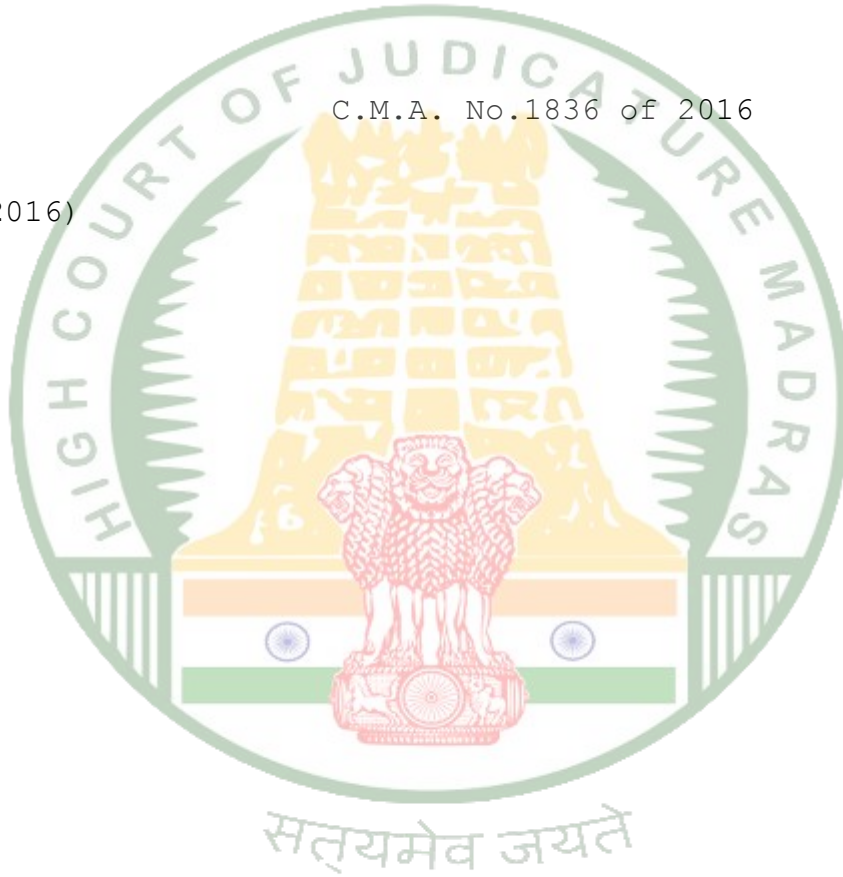
To

The Motor Accident Claims Tribunal,
Sub-Court, Hosur.

+1cc to Mr.S. S.Dhakshnamoorthy, Advocate, S.R.No.

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VSN(CO)
EU(05/10/2016)



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