

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.BASKARAN

C.M.A.No.2505 of 2016
and
C.M.P.No.17782 of 2016

New India Assurance Company Limited
58 Garden Apartment
Purasavakkam High Road
Chennai-600 007

... Appellant

Vs

1.J.Suresh Kumar
2.S.Vasudevan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.538 of 2012, dated 23.03.2016 on the file of the Motor Accidents Claims Tribunal, II, Additional District Judge, Poonamallee.

For Appellant : Mr.N.Vijayaraghavan

JUDGMENT

(Delivered by S.BASKARAN, J.)

Challenging the Award dated 23.03.2016 passed by the Motor Accidents Claims Tribunal, II Additional District Judge, in M.C.O.P.No.538 of 2012, the New India Assurance Company Ltd., is before this Court.

2. The brief facts of the case is as follows:-

(i) This is a case of Road traffic accident.

(ii) On 19.06.2011, at about 02.30 p.m., when the 1st respondent/injured/J.Suresh Kumar was standing at Medavakkam-Sozhinganallur Road to proceed to the Global Hospital Entrance, he was hit by a Hero Honda Civil Car bearing Reg.No.TN09 AS 5670, which was driven in a rash and negligent manner by the driver of the 2nd respondent herein, due to which, the injured

suffered severe disfiguring scare on his left leg and left leg fracture.

(iii) The injured/J.Suresh Kumar, went before the Motor Accident Claims Tribunal, claiming compensation in a sum of Rs.22,00,000/-. To sustain his claim, the injured claimant himself was examined as P.W.1 and Dr.Subramanian, who treated the injured, was examined as P.W.2 and marked Exs.P.1 to P.12. On the side of the Insurance company, no witness was examined and no document was marked.

(iv) The Tribunal, after considering the oral and documentary evidence adduced, awarded compensation in a sum of Rs.17,26,500/- as follows:-

• 1.Injured's partial permanent disability	Rs. 1,65,000/-
• 2.Pain and suffering	Rs. 1,00,000/-
• 3. Nutrition expenses	Rs. 30,000/-
• 4.Loss of income	Rs. 3,15,000/-
• 5.Future earning capacity	Rs.3,00,000/-
• 6.Damage to clothes and articles	Rs. 1,500/-
• 7.Medical expenses	Rs. 7,65,000/-
• 8.Transport expenses	Rs. 50,000/-
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Total	- Rs.17,26,500/-

The said compensation awarded is under challenge before this Court.

3. The focus of the learned counsel for the appellant in this appeal is primarily with regard to the quantum of compensation and not with regard to the liability.

4. The learned counsel appearing for the appellant/Insurance Company submits that the quantum of compensation awarded by Tribunal is highly excessive. He further submits that the disability of the injured is fixed at 58% by the Tribunal and awarded a sum of Rs.1,65,000/-, which is without any basis. He further contended that a huge sum of Rs.1,00,000/- is awarded towards pain and suffering and Rs.50,000/- towards transportation and the same are highly exorbitant. However, the learned counsel for the appellant/Insurance Company has not raised any serious objection in respect of the other amounts granted or the interest granted at 7.5% per annum.

5. We have heard the learned counsel for the appellant and also perused the Award passed by the Motor Accidents Claims Tribunal.

6. The respondent suffered leg injury and fracture and Exhibits P.2-to P.7/Discharge Summary, indicated the nature of the injury as follows:-

" Type III A fracture both bones left leg proximal 1/3rd with crush injury of anterior compartment muscles;

inter locking nail (A.O. Nail-10 x 315) and 7 hole medial LC DCP tibia done on 20.06.2011

A) Would exploration and debridement done on 29.06.2011

B) Medial gastrocnemius myocutaneous flap with SSG done on 1.07.2011

C) would debidement exploration and lateral Gastrocnemius muscle flap done on 11.07.2011."

7. The 1st respondent herein/injured, had taken treatment in two hospitals viz., Global Hospital from 19.06.2011 to 27.07.2011 and from 27.08.2011 to 30.08.2011 and at MIOT Hospital from 23.02.2012 to 03.03.2012 and for the bills raised, the Tribunal granted Rs.7,65,000/-. We find that there is no error in fixing such compensation and also in respect of the percentage of disability. Therefore, the Award of Rs.17,26,500/-, in our considered view, is very reasonable and is justified.

8. All the amounts given as compensation to the injured victim, is very conservative and not warranting any interference. In view of the above we find no justification to entertain the appeal. Hence, the Civil Miscellaneous Appeal is dismissed at the stage of admission itself. The appellant/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of three months from the date of receipt of a copy of this order. On such deposit, the injured claimant is permitted to withdraw the award amount, by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount on the filing of such application. There will be no order as to costs in this appeal. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

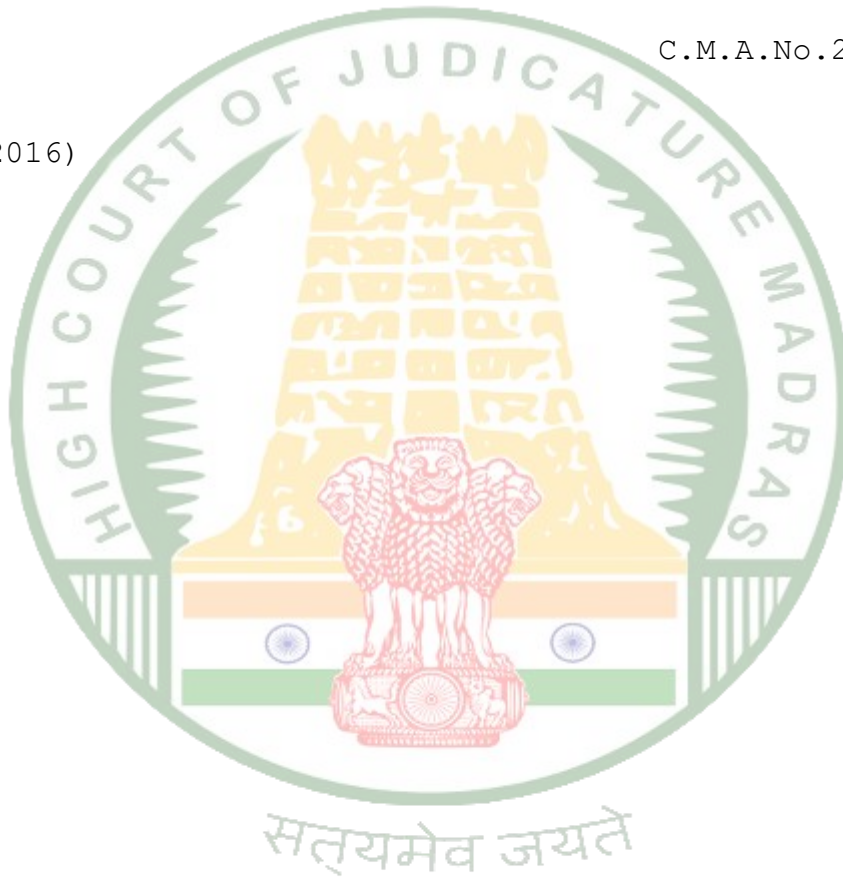
The II Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

C.M.A.No.2505 of 2016

MG(CO)
CA(27/12/2016)



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