

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2512 of 2016

&

C.M.P.No.17802 of 2016

United India Insurance Co. Ltd.,
Branch Office, 146-N, Kumar Complex,
Tiruchengode.

... Appellant

Versus

1. Duraisamy

2. Senthilnathan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 16.06.2016 made in M.C.O.P.No.38/2014 on the file of the Motor Accidents Claims Tribunal, Additional District Court at Namakkal.

For Appellant : Mr.T.Ravichandran

J U D G M E N T

The United India Insurance Company Limited has filed the present Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated 16.06.2016 made in M.C.O.P.No.38/2014 on the file of the Motor Accidents Claims Tribunal, Additional District Court at Namakkal.

2.It is the case of the claimant that on 25.09.2013 at about 6.45 p.m., when he was riding his bike bearing Registration No.TN-28-AM-3927 from Namakkal to Mohanur Main road towards left side of the road, a Mahindra Van bearing Registration No.TN-34-H-1667 driven by its driver said to have hit his vehicle and caused the accident. The claimant sustained multiple and grievous injuries all over the body. Immediately after the accident, the injured has laid a complaint before the Namakkal Police Station in Cr.No.972 of 2013 under Sections 279 and 337 of IPC against the driver of the Mahindra Van. Pursuant to injuries, the claimant was rushed to the C.M.Hospital, Namakkal and he has taken treatment as in-patient for a period of 7 days, i.e. from 25.09.2013 to 01.10.2013 and discharged from the hospital and thereafter, he is taking treatment as outpatient in RMCH Hospital, Coimbatore. According to the claimant, the

accident had happened due to the rash and negligent driving of the driver of the Mahindra Van.

3.Learned counsel appearing for the appellant would submit that the Tribunal has erred in calculating loss of income without any proof and documentary evidence and awarded huge compensation towards loss of earnings. Arguing further, he would submit that the learned Tribunal ought to have considered the fact that without following any medical guideline, the Doctor has assessed the disability at 40% and the Tribunal has also fixed 30% disability which is unsustainable and therefore, a huge sum of Rs.5,00,000/- awarded under the head 'loss of earnings', which is un-reasonable shall be reduced. He would further submit that it is not a fit case of adopting multiplier method, but, the learned Tribunal has adopted the same and thereby, awarded a huge compensation to the two grievous injuries and six simple injuries sustained by the claimant. Therefore, the same is liable to be interfered with.

4.In the Wound Certificate issued by C.M.Hospital, Namakkal, it has been stated that the claimant has sustained the following injuries:

1.Head injury with conscious stage with Haemorrhagic contusion brain and brain oedema.

2.Fracture right frontal skull bone

3.Lacerated injury right temporal scalp

4.Lacerated injury upper lips

5.Contusion with Abrasion right knee

6.Contusion with abrasion right ankle

7.Lacerated injury inter parietal scalp

8.Contusion with abrasion left knee

CT Scan brain and skull - 1. Fracture right frontal skull bone.

2.Hemorrhagic contusion brain and brain oedema. Injuries 1 and 2 are grievous in nature and 3 to 8 are simple in nature.

5.Learned counsel for the claimant would submit that the aforesaid injuries would clearly show that Head injury with conscious stage with Hemorrhagic contusion brain and brain oedema and Fracture right frontal skull bone have been prescribed as grievous in nature and the other six injuries are mentioned as simple in nature.

6.Per contra, learned counsel for the claimant would further submit that on the basis of the evidence adduced by the Doctor, supported with the wound certificate, marked as Ex.P3, Medical bills marked as Ex.P5, discharge summary dated 1.10.2013, marked as Ex.P7, CT Scan report dated 14.11.2015, marked as Ex.P9 Scan Picture marked as Ex.P10, the Tribunal has come to the conclusion that the injured had sustained two grievous injuries and fractures and six simple injuries and fixed the disability at 30%. The Tribunal proceeding to apply multiplier method,

again taken on record the pay slip, which was marked as Ex.P12 dated 14.03.2016 and the evidence of PW3-employer of the claimant, who had deposed in his evidence that the claimant was working as lorry driver under him and he was earning a sum of Rs.8000/- as salary and Rs.4000/- as batta and in total Rs.12,000/- as he was drawing as monthly income and based on Ex.P12, the Tribunal has fixed a sum of Rs.10,000/- as monthly income, adopted the multiplier 16 as per the II Schedule of Motor Vehicles Act and awarded a reasonable amount at Rs.5,00,000/- towards loss of earnings and hence, the same cannot be found fault with. I find merit on these submissions.

7. Since the injured has sufficiently proved before the Tribunal that he has sustained two grievous injuries on his head and fracture in his right scalp and six simple injuries all over the body with support of Ex.P3, Wound Certificate, this Court is not able find any merits on the submissions made by the learned counsel for the appellant/Insurance Company and it is a fit case for applying the multiplier method, because the injured was a driver, working in SRS Transport Company with a monthly salary of Rs.8000/- per month with Rs.4000/- p.m. as batta. This has been proved by the oral evidence of PW3 who also supported the pay certificate-Ex.P12, issued by SRS Transport Company. The doctor, who was examined as PW2 had deposed that due to head injury, blood was oozing, as a result, he became unconscious, for which, he issued disability certificate fixing 30% partial and permanent disability. Besides he had undergone surgery. Since it was the case of the injured that he had suffered fracture of his bone inside the brain, the same will affect his normal earning capacity. Moreover, the claimant has taken treatment as inpatient for a period of seven days which was also not disputed by the learned counsel for the Insurance Company. Accordingly, the award is confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

8. Since the learned counsel for the appellant submitted that the appellant had deposited a sum of Rs.25,000/- towards statutory deposit, the balance amount is directed to deposit within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Court,
Namakkal.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.65369

C.M.A. No.2512 of 2016
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CP (CO)
CA(03/01/2017)



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