

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.02.2016

CORAM

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

C.M.A. NO. 453 OF 2015

AND

M.P. NO. 1 OF 2015

M/s.New India Assurance Co. Ltd.
482, 483, SNV Chambers, 3rd Floor
Coimbatore. .. Appellant/2nd Respondent

- Vs -

1. K.Muthusingam .. 1st Respondent/Claimant
2. C.Balaji
3. Riyas Ahamed
4. M/s.United India Insurance Co. Ltd.
280, Ooty Main Road
Mettupalayam, Coimbatore. .. Respondents 2 to 4/
Respondents 1,3 and 4.

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 30.07.2012, passed by the Motor Accident Claims Tribunal (I Addl. District Judge), Tirupur, and made in MCOP No.189 of 2007.

For Appellant : Mr. J.Chandran

For Respondents: Mr. S.S.Swaminathan for R-1
Mr. T.Ravichandran for R-4

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 and 4.

2. The appellant/insurer of the van has filed the appeal challenging the award dated 30.07.2012, passed by the Motor Accident Claims Tribunal (I Addl. District Judge), Tirupur, made in MCOP No.189 of 2007.

3. The facts, in brief, is as under :-

On 05.12.2006 at about 05.30 hours, the first respondent/claimant was travelling in the van, bearing Regn. No.TN-31-D-0939, belonging to the second respondent herein, as additional driver. At that time, the van, driven by its driver in a rash and negligent manner dashed against the stationary lorry bearing Regn. No.TN-28-A-5560, which was standing on the left side of the road and due to the said accident, the claimant suffered grievous injuries. The claimant was admitted to the Rex Hospital, Coimbatore and received treatment between 5.12.2006 and 3.1.07. With regard to the said occurrence, a case was registered on the file of the Moolanur Police Station in Crime No.360/2006.

4. The injured, on the date of accident, was working as a driver with Sathyapriya Road Links and earning a monthly salary of Rs.7,500/= and due to the injuries suffered by the claimant in the accident, he was not able to continue his avocation. Therefore, the claimant filed the claim petition claiming a sum of Rs.15,00,000/= as compensation.

5. In support of the claim, the claimant examined himself as P.W.1 besides examining P.Ws. 2 to 4 and Exs.P-1 to P-23 were marked, the details of which are as follows:-

Ex.P-1	- Xerox Copy of First Information Report
Ex.P-2	- Xerox Copy of Accident Certificate dated 4.1.07
Ex.P-3	- Discharge summary dated 5.12.2006
Ex.P-4	- Medical Bills
Ex.P-5	- Medical Records
Ex.P-6	- Trip Sheet
Ex.P-7	- Blood Bank receipt dated 7.12.2006
Ex.P-8	- Photograph of the claimant
Ex.P-9	- Pay Certificate of the claimant
Ex.P-10	- Driving licence of the claimant
Ex.P-11	- Scan Report dated 5.12.06
Ex.P-12	- Medical Bills dated 2.2.07
Ex.P-13	- Discharge Summary
Ex.P-14	- Driving Licence of P.W.2

Ex.P-15	-	Authorisation Letter
Ex.P-16	-	Account Book of Sathya Road Links
Ex.P-17	-	Final Register of Sathya Road Links
Ex.P-18	-	Pay Receipts
Ex.P-19	-	Disability Certificate dated 7.11.08 policy
Ex.P-20	-	X-ray
Ex.P-21	-	Xerox copy of Policy document
Ex.P-22	-	Permit copy
Ex.P-23	-	Driving Licence of P.W.4

6. On the side of the second respondent before the Tribunal, one Suresh Kumar was examined as R.W.1 . However, no documentary evidence was marked.

7. The Tribunal based on the oral evidence of P.W.1, the F.I.R. and also taking note of the evidence of P.Ws.2 to 4, which was adduced to prove the salary received and the disability suffered by the claimant, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van and, therefore, the liability was fixed on the appellant/insurer of the van to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Income	-	Rs.8,67,000/=
Towards Pain & Suffering	-	Rs. 30,000/=
Loss of amenities	-	Rs. 25,000/=
Transportation & Extra Nourishment	-	Rs. 2,000/=
Medical Expenses	-	Rs.2,05,975/=
Total Compensation	-	Rs.11,29,975/=

8. In all the Tribunal awarded a compensation of Rs.11,29,975/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit along with costs. Aggrieved by the said award, the appellant/insurer of the van is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the income of Rs.5,000/= per month fixed by the Tribunal is on the higher side. Per contra, it is submitted by the learned counsel for the claimant that the amounts awarded on all the other heads is on the lower side and

the income fixed by the Tribunal would offset the meagre amounts that have been awarded on the other heads.

10. This Court has given its careful consideration to the above contentions advanced by the learned counsel on either side. Admittedly, the respondents/claimants have not filed any appeal claiming enhancement. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, it is seen that even P.W.2, co-worker has stated that the claimant was earning a sum of Rs.5,000/= per month towards wages. The Tribunal, based on the said evidence and the salary receipts has taken the income of the claimant at Rs.5,000/=. Considering the date of accident, this Court feels that it would be just and proper to fix the salary of the injured claimant at Rs.4,000/= per month and adopting the multiplier of 17, as rightly fixed by the Tribunal, the claimant would be entitled to a compensation of Rs.6,93,600/= for the 85% disability suffered by him.

11. As contended by the learned counsel for the claimant, on a perusal of the injuries suffered by the claimant, the amount of Rs.30,000/= awarded by the Tribunal towards pain and suffering is on the lower side. So also the amount of Rs.2,000/= awarded under the head "Transportation and Nourishment". Considering the entire gamut of facts and keeping in mind the injuries suffered by the claimant and the nature of treatment taken by the claimant, this Court is of the considered view that it would be just and proper to enhance the amounts under the heads "Pain and Suffering" and "Transportation & Nourishment" to Rs.70,000/= and Rs.4,000/= respectively. Accordingly, the award of the Tribunal is modified as hereunder :-

Loss of Income	-	Rs.6,93,600/=
Towards Pain & Suffering	-	Rs. 70,000/=
Loss of amenities	-	Rs. 25,000/=
Transportation & Extra Nourishment	-	Rs. 4,000/=
Medical Expenses	-	Rs.2,05,975/=
Total Compensation	-	Rs.9,98,575/=

12. Accordingly, this Civil Miscellaneous Appeal is disposed of modifying the award passed by the Tribunal from Rs.11,29,975/= to Rs.9,98,575/= with interest @ 7.5%. It is stated that a sum of Rs.25,000/= has been deposited to the credit of MCOP No.189/2007, at the time of filing this appeal. The appellant was also directed to deposit the entire award

amount, along with interest, as directed by the Tribunal, to the credit of MCOP No.189/2007, while granting stay. In such circumstances, the claimants are permitted to withdraw the amount in deposit, as per the above modification and the balance portion in deposit shall be withdrawn by the appellant. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

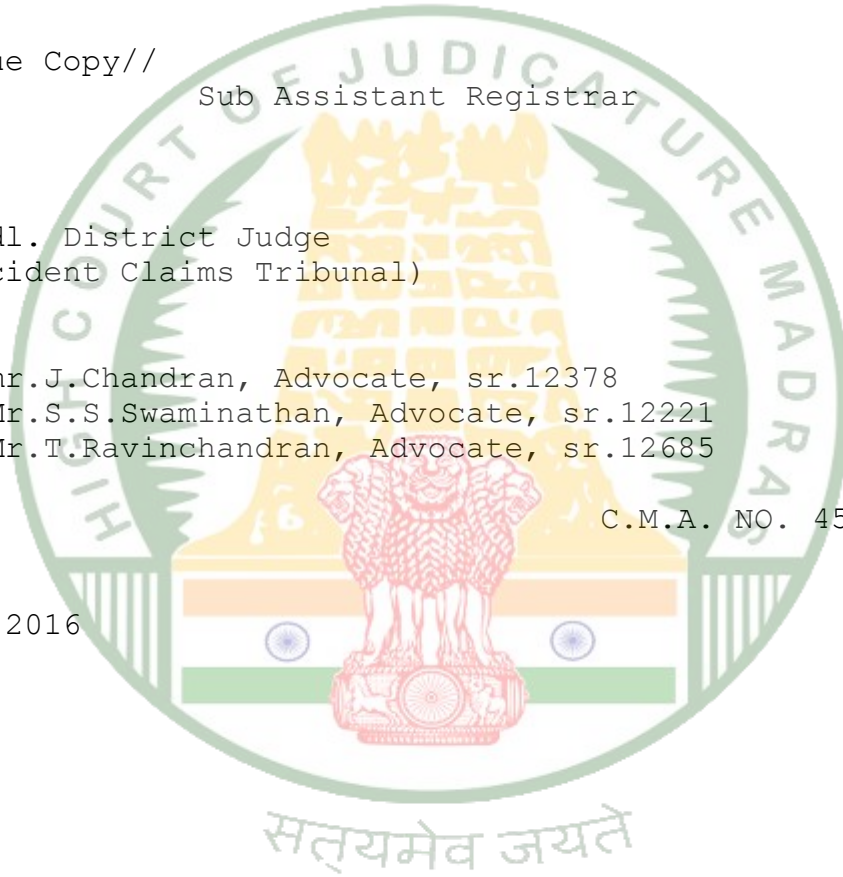
GLN/SL

To
The I Addl. District Judge
(Motor Accident Claims Tribunal)
Tiruppur.

+1 cc to Mr.J.Chandran, Advocate, sr.12378
+1 cc to Mr.S.S.Swaminathan, Advocate, sr.12221
+1 cc to Mr.T.Ravinchandran, Advocate, sr.12685

C.M.A. NO. 453 OF 2015

ala co
kra 29.03.2016



WEB COPY