

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.356 of 2011
and
M.P.Nos.1 & 2 of 2011

The New India Assurance
Company Ltd.,
No.1360, E.V.N.Road,
Amman Complex,
Erode-11.

...3rd Respondent/Appellant

Versus

1.K.P.Manoharan ...Petitioner/I Respondent
2.R.Senthilnathan ...1st Respondent/2nd Respondent
3.S.Saravanabhavan ...2nd respondent/3rd Respondent

(Respondents 2 & 3 set-exparte in the lower Court.
Hence, notice to them is dispensed with).

Prayer: Civil Miscellanies Appeal is filed under section 173 of Motor Vehicles Act, 1988 against the award and decree dated 20.09.2010 passed in M.C.O.P.No.85 of 2009 on the file of the Motor Accident Claims Tribunal(Principal Sub Judge), Erode.

For Appellant :Mr.R.Sivakumar
For R1 :Mr.S.Kaithamalai Kumaran
For RR2 & 3 :Set exparte

JUDGMENT

Questioning the quantum of the award dated 20.09.2010 and made in the claim petition in MCOP No.85 of 2009 on the file of the Motor Accident Claims Tribunal(Principal Sub Judge), Erode, the third respondent/ Insurance Company has filed this memorandum of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act 1988.

2. The second respondent is the driver and the third respondent herein is the owner of the offending vehicle. The first respondent had moved the Claims Tribunal with a claim petition in MCOP No.85 of 2009, claiming a total sum of Rs.10,00,000/- for the injuries sustained by him in a road traffic accident, said to have been taken place on 14.12.2008 at about 5.30 p.m., near S.K.M.Poultry at Erode to Karur Main

Road, Solankapalayam involving a two wheeler bearing Registration No.T.N.33 AH 4268 and a private passenger bus bearing Registration No.TN 33 AE 4467.

3. The appellant/Insurance Company/R3 alone had contested the claim. On appreciation of the evidences both oral and documentary, the Claims Tribunal had proceeded to award a sum of Rs.6,56,981/-, directing the appellant Insurance Company, to pay the this amount within a months time along with interest @ 7.5% per annum. Questioning the quantum of award, the appellant/Insurance Company has preferred the present appeal.

4. Heard, Mr.R.Sivakumar, learned Counsel appearing for the appellant Insurance Company and Mr.S.Kaithamalai Kumaran, learned counsel appearing for the first respondent/claimant. The 2 & 3 remained ex-parte before the Tribunal.

5. Since the quantum of the award has been disputed by the appellant/Insurance Company, the other facts such as the negligence and liability need not be traversed. The first respondent/claimant has claimed that he was working as Manager/Accountant at A.V.N Turmeric and Jaggery Mundy, Erode and getting a monthly salary of Rs.8000/-. He has also claimed that at the time of accident, he was aged about 46 years.

6. The Tribunal based on the evidences has determined the monthly income of the first respondent/claimant @ Rs.7500/-. This has not been disputed by Mr.R.Sivakumar, learned counsel appearing for the appellant/Insurance Company. But what he would contend is that the method of calculation i.e., the multiplier system followed by the Tribunal was absolutely wrong and though the just compensation ought to have been determined by the Tribunal by calculating the pecuniary loss based on the injuries as well as the percentage of the disability suffered by the claimant.

7. This Court while endorsing the argument advanced by Mr.R.Sivakumar, learned counsel, finds that the method followed by the Tribunal for determining the compensation is absolutely wrong. Mr.R.Sivakumar, learned counsel has not disputed the amount of Rs.2,59,027/- granted by the Tribunal towards the medical expenses. He has also not disputed the amount of Rs.1,14,034/-, awarded by the Tribunal under the head of pain and suffering.

8. It is to be noted that as per Ex.P20 & P21, are the Disability Certificates, seems to have been marked through PW2, Dr.R.Sekar, Medical Superintendent, K. J. Hospital, Coimbatore. Ex.P20, is the Disability Certificate, relating to the permanent visual disability i.e., loss of vision in right eye to the extent of 30%. Ex.P21, is relating to the impairments in respect of left hand. On perusal of this document, it shows

that the claimant's left wrist movement was restricted to the extent of 5.4%. With reference to deformity in left wrist, the disability is assessed @ 1%. Totally 6.4%. For taking fair decision, the fraction can be deleted and the disability is rounded to 36%. For 36% disability, this Court has suggested that a sum of Rs.2000/- per 1% could be granted. This has been accepted by both the learned counsels. Accordingly, this Court has determined that a sum of Rs.72,000/- can be awarded towards the disability suffered by the petitioner. Apart from this, one month salary of Rs.7500/- can be awarded, towards loss of income for one month as the first respondent/claimant was taking treatment at K.G. Hospital, during that period.

9. Keeping in view of the above fact, this Court finds that totally a sum of Rs.4,52,561/- may be awarded in favour of the first respondent/claimant under the following heads:

(1) Medical expenses	Rs.2,59,027/-
(2) For disability to the extent of 36% (Rs.2000/- per 1%)	Rs. 72,000/-
(3) Pain and Suffering	Rs.1,14,034/-
(4) Loss of earning for one month	Rs. 7,500/-
Total	Rs.4,52,561/-

Accordingly, this Court finds that the award of the Tribunal to the extent of Rs.6,56,981/- is reduced to Rs.4,52,561/-.

10. It is brought to the notice of this Court by Mr.R.Sivakumar, learned counsel appearing for the appellant that entire award passed by the Tribunal i.e., a sum of Rs.6,56,981/- was deposited alongwith interest @ 7.5% per annum before the Tribunal to the credit of the claim petition in MCOP No.85 of 2009. Since the award of the Tribunal has been reduced to Rs.4,52,561/-, the first respondent/claimant is at liberty to withdraw the entire amount i.e., Rs.4,52,561/- alongwith accrued interest from the Claims Tribunal without filing any formal application seeking permission. The excess amount deposited by the appellant/Insurance Company shall be refunded along with proportionate interest. Accordingly, the Civil Miscellaneous Appeal is allowed partly. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sub Judge
Motor Accident Claims Tribunal,
Erode.

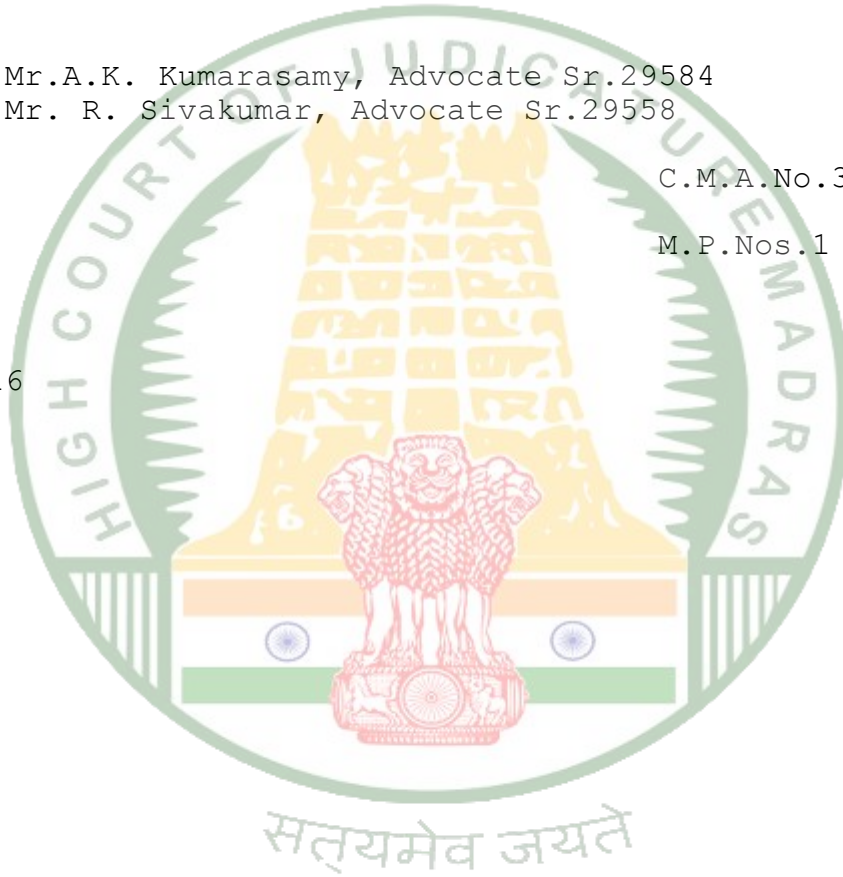
2. The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.A.K. Kumarasamy, Advocate Sr.29584

+ 1 cc to Mr. R. Sivakumar, Advocate Sr.29558

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and
M.P.Nos.1 & 2 of 2011

PVS (CO)
EU 30.09.16



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