

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.3764 of 2011
and
M.P.No.1 of 2011

Bajaj Allianz General Insurance Company Limited,
Surya Bala Auto Agencies,
546-B, Kottur Road,
Pollachi Taluk. ... Appellant/R2

... Vs ...

1. Kanagaraj
2. Nallasamy ... Respondents/Petitioner & R1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the decree and judgment dated 21.03.2011, made in M.C.O.P.No.113 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur.

For Appellant : Mr.S.Manohar
For R-1 : Mr.Ma.P.Thangavel
For R-2 : Given up

JUDGMENT

This civil miscellaneous appeal is directed against the decree and judgment dated 21.03.2011, made in M.C.O.P.No.113 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur.

2. The first respondent herein as a claimant has filed a claim petition in M.C.O.P.No.113 of 2008 before the Additional Sub Court, Motor Accidents Claims Tribunal, Tiruppur, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him against the appellant and the second respondent herein. The Tribunal, after considering the evidence adduced by both parties, awarded a sum of Rs.3,08,000/- towards compensation along with interest at 7.5% per annum from the date of petition

till the date of deposit towards compensation to the claimant and directed the appellant and the second respondent herein to pay the said compensation amount jointly or severally to the claimant. Aggrieved against the said award passed by the Tribunal, the second respondent in the above M.C.O.P/insurance company had preferred this appeal before this Court.

3. The learned counsel for the appellant/Insurance Company would mainly contend that the Tribunal failed to appreciate the fact that as per the report of the Motor Vehicle Inspector, no driving licence was produced by the rider of the motorcycle. It is further contended that the Tribunal has failed to appreciate that there was no assessment of loss of earning power and that there was no evidence whatsoever to show that the claimant could not continue his avocation after the accident. Further, the Tribunal is erred in fixing the income of the claimant at Rs.5,000/- per month and loss of earning power at 30% without any basis. It is also contended by the learned counsel for the appellant that the Tribunal is erred in fixing the age of the claimant at 39 and the multiplier adopted by the Tribunal is also not correct. The learned counsel also contended that the Tribunal ought to have followed the precedents of the Hon'ble Supreme Court and ought to have assessed the compensation accordingly. The Tribunal, without considering the facts and circumstances of the case, awarded compensation of Rs.3,08,000/- to the claimant and directed the appellant/insurance company and the second respondent herein to pay the said compensation amount and therefore, the learned counsel prayed that the award passed by the Tribunal has to be set aside and the appeal has to be allowed and just and reasonable compensation has to be awarded.

4. The learned counsel appearing for the first respondent/claimant would contend that the Tribunal, after appreciating the entire facts and circumstances of the case and also considering the oral and documentary evidence adduced on either side, correctly passed an order directing the appellant and the second respondent herein to pay a sum of Rs.3,08,000/- towards compensation to the claimant. Therefore, there is no illegality or infirmity in the award passed by the Tribunal and hence, the learned counsel for the first respondent/claimant prayed that the award passed by the Tribunal has to be confirmed and the appeal has to be dismissed.

5. This Court has considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the entire records.

6. In this case, admittedly, the first respondent herein has

filed a claim petition in M.C.O.P.No.113 of 2008 claiming compensation under various heads. Further, in this case, Dr.Senthilkumar was examined as P.W.4, who examined the claimant and deposed that the claimant sustained injuries in the right wrist and 5th Metacarpal bone was fractured. The Doctor fixed the disability at 32.4% and issued disability certificate Ex.P.7. There is no reason to disbelieve the evidence of the Doctor. The Tribunal, fixed the disability suffered by the claimant at 30% and awarded a sum of Rs.3,08,000/- under the following heads:

Loss of Income for 30% disability	-	Rs.2,88,000/-
Transport to hospital	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Pain and sufferings	-	Rs. 10,000/-
		Rs.3,08,000/-

7. On perusal of the judgment of the Tribunal, it is seen that the Tribunal, after considering the entire facts and circumstances of the case and also considering the evidence of the Doctor, correctly fixed the age and income of the claimant and correctly applied the multiplier and awarded just and reasonable compensation of Rs.3,08,000/, and in any way, it cannot be termed as excessive. Hence, the argument of the learned counsel for the appellant that the Tribunal awarded excessive compensation is not at all acceptable and hence, the civil miscellaneous appeal deserves to be dismissed.

8. In the result, the civil miscellaneous appeal is dismissed by confirming the decree and judgment dated 21.03.2011, made in M.C.O.P.No.113 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jr1

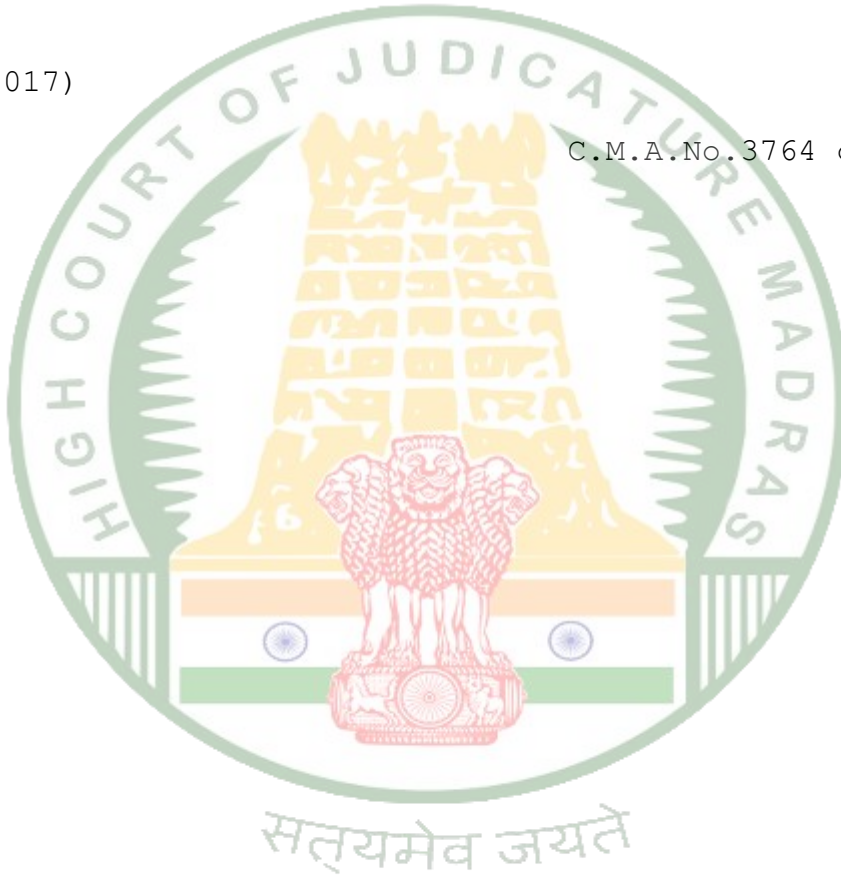
To

The Additional Sub Court,
Motor Accidents Claims Tribunal,
Tiruppur.

+lcc to Mr.Ma.Pa. Thangavel, Advocate, S.R.No.74928
+lcc to Mr.S. Manohar, Advocate, S.R.No.74845

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