

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM

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

C.M.A.No.3277 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

The Manager-Claims
M/s. Cholamandalam MS General Ins. Co. Ltd.
IInd Floor, No.2, N.S.C.Bose Road,
Chennai 600 001. Appellant/2nd Respondent

vs.

1. Mr.D.Karthick 1st Respondent/Petitioner

2. G.Kamaraj 2nd Respondent/1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 25.04.2014 passed in M.C.O.P.No.360 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Hosur.

For Appellant : Mr.M.B.Gopalan

For Respondents : M/s. Mukund R.Pandian for R1
R2- Not ready in notice

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Insurance Company is on appeal challenging the award dated 25.04.2014 passed in M.C.O.P.No. 360 of 2013, on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Hosur.

2. It is a case of injury. On 01.02.2013 at about 08.00 hrs when the injured was going on his motorcycle bearing Registration No.TN-38-AC-4793, the lorry belonging to the second

respondent bearing Registration No.TN-58-P-6540 which was proceeding in a rash and negligent manner in front of the motorcycle, suddenly stopped without any indication and hence, the motorcyclist dashed against the backside of the lorry and thereby, sustained grievous injuries to the claimant including head injury. FIR was registered against the driver of the lorry. The injured claimant filed a claim for compensation for a sum of Rs.35,80,000/- but restricted to Rs.20,00,000/-.

3. In support of the claim, the claimant examined himself as P.W.1 and Dr.Gandhi was examined as P.W.2 and Exs.P-1 to Ex.P.16 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Copy of Registration Certificate
P3	Copy of Insurance Policy
P4	Copy of D.L.of the lorry driver
P5	Discharge Summary Original
P6	Out Patient case sheet original
P7	Out Patient case sheet original
P8	Certificate issued by Vasan Eye care, original.
P9	Medical Bills Original
P10	Copy of Sports Certificate
P11	Copy of Identity card
P12	Copy of D.L. of petitioner
P13	X-ray
P14	C.T.Scan Original
P15	X-Ray Bills
P16	Permanent Disability Certificate

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 2nd respondent herein remained exparte.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the injured was not having valid driving licence to drive the two wheeler came to conclusion that the driver of the lorry was rash and negligent in driving the vehicle and he was responsible for the accident and consequently liability was fixed on the insurance

company and the 2nd respondent herein jointly and severally, as the vehicle was insured with the appellant insurance company, to compensate the claimant. On this issue, learned counsel for the appellant has not placed any material to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 25,27,200/-
2	Pain and Suffering	Rs. 6,50,000/-
3	Extra Nourishment	Rs. 72,000/-
4	Medical Expenses	Rs. 4,33,500/-
5	Loss of earning for one year	Rs. 1,44,000/-
6	Attender Charges	Rs. 4,50,000/-
7	Loss of Social Enjoyment	Rs. 75,000/-
	Total compensation	Rs. 47,26,700/-

6. Insofar as the compensation is concerned, based on the evidence of the claimant, the Tribunal fixed the notional income of the injured at Rs.12,000/- per month. Considering the fact that the accident had occurred in the year 2013, and that the injured is only a student aged about 21 years, we are of the view that without any evidence to support the plea for loss of earning for one year, a sum of Rs.1,44,000/- has been granted. Apart from that, the Tribunal has not stated any specific reason as to how the claimant is entitled for compensation under the head loss of Social Enjoyment and therefore, we are of the view that a sum of Rs.4,50,000/- granted under the said head is unreasonable.

7. Insofar as the compensation awarded by the Tribunal under the heads loss of income, Medical expenses, Extra nourishment, are very reasonable and they were justified.

8. Insofar as the compensation awarded under the head disability and loss of earning power is concerned, we are inclined to confirm the award passed by the Tribunal. The multiplier adopted by the Tribunal at 18, considering the age of the injured, viz., 21 years, is correct. But, considering the fact that the injured has suffered 65% disability, which is evident from the disability certificate given by P.W.2 Doctor, we are of the view that 65% disability taken by the Tribunal is

justified. Accordingly, the amount awarded under the head disability and loss of earning power is hereby confirmed.

9. Considering the fact that the injured was taking treatment as inpatient for a period from 02.02.2013 to 03.09.2013 and that he has suffered 65% disability, we are inclined to modify the award as follows:

10. Accordingly, the compensation awarded by the Tribunal under different heads is modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
1	Loss of income	Rs.25,27,200/-	Rs.25,27,200/-
2	Pain and Suffering	Rs. 6,50,000/-	Rs. 2,00,000/-
3	Extra Nourishment	Rs. 72,000/-	Rs. 22,000/-
4	Medical Expenses	Rs. 4,33,500/-	Rs. 4,33,500/-
5	Loss of earning for one year	Rs. 1,44,000/-	Rs. 1,28,500/-
6	Attender Charges	Rs. 4,50,000/-	Rs. 2,00,000/-
	Total compensation	Rs.47,26,700/-	Rs.35,11,200/-

11. There is no serious objection with respect the interest granted at 7.5% per annum.

12. In the result, the civil miscellaneous appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced from Rs.47,26,700/-to Rs.35,11,200/-.

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) In view of the same, the appellant/Insurance Company is directed to deposit the compensation now awarded by this Court, to the credit of M.C.O.P.No.360 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Hosur within a period of eight weeks from the date of receipt of a copy of the same and on such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount now modified by this Court along with proportionate interest by filing necessary application before the Tribunal. It is also made clear that if

any excess amount is deposited, the appellant/Insurance company is entitled to withdraw the same.

(iv) The excess Court fee paid if any is directed to be refunded to the appellant.

There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rg/smi

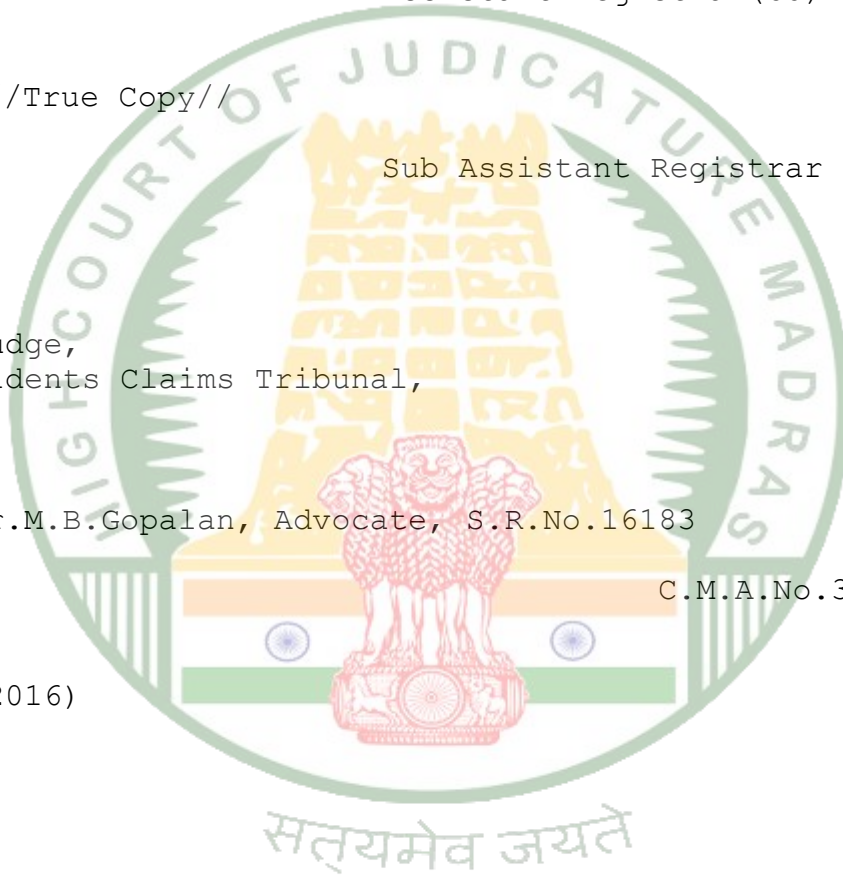
To

The Sub Judge,
Motor Accidents Claims Tribunal,
Hosur.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.16183

C.M.A.No.3277 of 2014

LRS (CO)
CA(24/03/2016)



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