

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.03.2016

CORAM

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

C.M.A. NO. 3289 OF 2014

AND

M.P. NO. 1 OF 2014

The Manager Claims
IFFCO - TOKIO General
Insurance Co. Ltd.
Vellore.

... Appellant/2nd Respondent

- Vs -

1. Lokesh ...1st Respondent/claimant
2. B.S.Ravi ... Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2014, passed by the Motor Accident Claims Tribunal, Sub Court, Hosur, made in MCOP No.187 of 2013.

For Appellant : Mr. N.Vijayaraghavan

For Respondents: Mr. Mukund Pandiyan

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent/claimant.

2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 03.04.2014, passed by the Motor Accident Claims Tribunal, Sub Court, Hosur, made in MCOP No.187 of 2013.

3. On 10.11.2012, at about 02.00 p.m., when the claimant Lokesh was travelling in the Bajaj Discover Motorbike, bearing Regn. No.TN-24-U-9668, as pillion rider, which was driven by one Siddappa and proceeding on the Krishnagiri Hosur NH-7, the Innova car bearing Regn. No.TN-24-F-3325, coming in the opposite

direction, driven by its driver in a rash and negligent manner, dashed against the motorbike in which the claimant was travelling and, thereby, both the rider and the pillion rider fell down and suffered severe injuries and they were taken to the Government Hospital, Hosur, for treatment. A case was registered against the driver of the Innova car in Crime No.459/13 u/s 279 and 337 IPC.

4. The deceased, on the date of accident, was working as contract labourer in M/s. Tab India Granite Company Limited. The first respondent/claimant, for the injuries suffered, filed the claim petition claiming a sum of Rs.16,00,000/= as compensation.

5. This claim was enquired along with another claim in M.C.O.P.No.188 of 2013.

6. In support of the claim, the claimant examined himself as P.W.1 besides one Siddappa, the person who drove the motorbike was examined as P.W.2 and Dr.Gandhi, who treated the claimant was examined as P.W.3 and Exs.P-1 to P-15 were marked, the details of which are as follows:-

Ex.P-1	-	Copy of First Information Report
Ex.P-2	-	Copy of Registration Certificate
Ex.P-3	-	Copy of Insurance Policy
Ex.P-4	-	Copy of Driving Licence of car Driver
Ex.P-5	-	Discharge Summary Original
Ex.P-6	-	Discharge Summary Original
Ex.P-7	-	Medical Bills Original
Ex.P-8	-	Wound Certificate Original
Ex.P-9	-	Copy of Driving Licence
Ex.P-10	-	Motor Vehicle Inspector Report of Motorcycle
Ex.P-11	-	Motor Vehicle Inspector Report of Car
Ex.P-12	-	X-ray
Ex.P-13	-	Permanent Disability Certificate
Ex.P-14	-	X-ray
Ex.P-15	-	Permanent Disability Certificate

7. On the side of the respondents, neither any witness was examined nor any document was marked.

8. The Tribunal based on the oral evidence of the P.Ws.1 & 2, the F.I.R. which has been adduced to prove that the car was driven in a rash and negligent manner and also taking note of the evidence of P.W.3, the doctor, who was examined to prove the disability suffered by the claimant, coupled with the documentary evidence and further there being no evidence adduced on behalf of the appellant to refute the testimony of the prosecution witnesses as to the rash and negligent driving of the car, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the car and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

For Permanent Disability	-	Rs.11,88,000 /=
Nutrition & Healthy Food (5000 * 6)	-	Rs.30,000/=
Attender Charges for 3 months (Rs.6000 X 3)	-	Rs.18,000/=
Loss of social enjoyment, frustration, etc.		Rs.30,000/=
Loss of earnings		Rs.60,000/=
Medical Bills		Rs.60,000/=
Total Compensation	-	Rs.14,41,000/=

9. In all the Tribunal awarded a compensation of Rs.14,41,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

10. The only point raised by the learned counsel appearing for the appellant is that the multiplier method adopted is not sustainable.

11. This Court has given its careful consideration to the above contention advanced by the learned counsel for the appellant. On a careful perusal of the evidence on record, this Court finds that through the medical evidence, the claimant has proved his disability. The abovesaid fact is evident from column No.11 of the claim petition, which has been proved by discharge summary marked as Ex.P-5, wherein the various injuries suffered by the claimant are recorded. The injury suffered is a comminuted fracture of left femur and tibia and fracture on the

left patella also. In addition to the above there are several other injuries which required surgical treatment as well. The insured was an in-patient on two occasions, for about three weeks in all. The injured is young, aged about 22 years, and the injuries to the left leg, including knee, have left a limp on the left leg because of shortening. In such circumstances 55% physical disability and, therefore, the functional disability accepted by the Tribunal cannot be said to be improper or excessive.

12. Further, the employment and earnings of the injured have been proved by the claimant and there is no evidence contrary to the same from the side of appellant insurer. The earnings fixed or the functional disability fixed cannot be doubted as the same is substantiated by documentary evidence. The physical disability has left behind a loss of earning capacity for which the multiplier method has been correctly applied. Further, the Tribunal has also taken into account the future prospects of the injured while fixing the earnings of loss of income of the injured. In the above circumstances, this Court finds no reason to interfere with the award passed by the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order passed by the Tribunal. The appellant is directed to deposit the entire award amount, if not already deposited, along with interest to the credit of MCOP No.187/2013. On such deposit, the claimant is permitted to withdraw the amount along with interest. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

GLN

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To

1.The Sub Court
(Motor Accident Claims Tribunal)
Hosur.

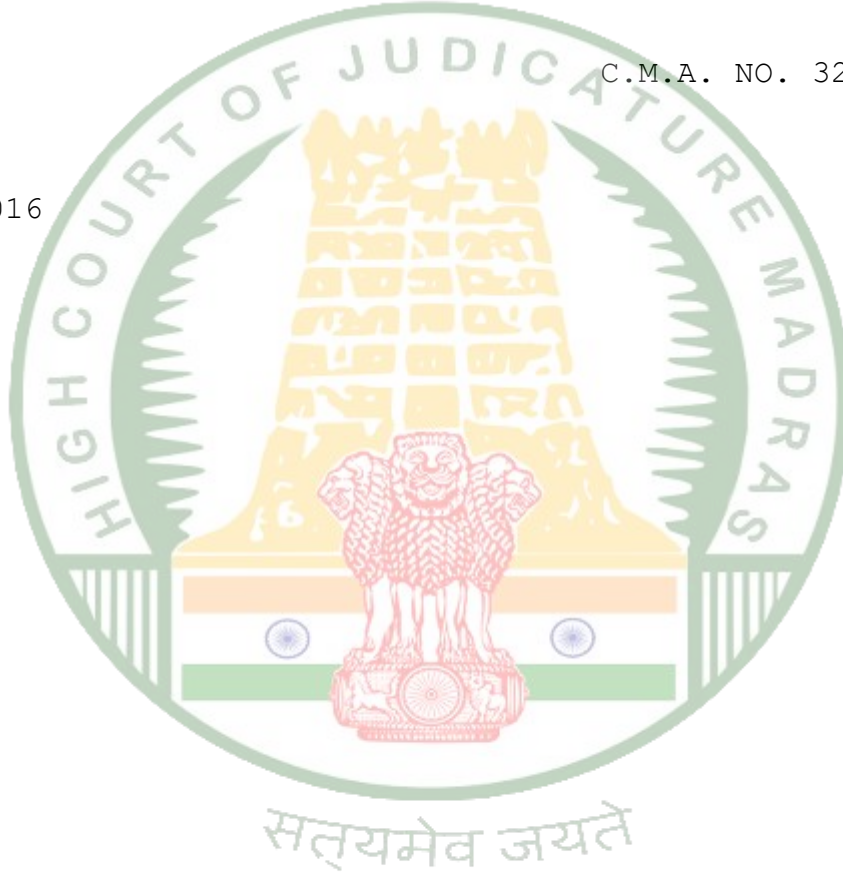
2.The Section Officer,
VR Section, High Court Madras

+1 cc to Mr.Mukund R.pandiyan Advocate sr.14209

+1 cc to Mr.N.VijayaRaghavan Advocate sr.14187

C.M.A. NO. 3289 OF 2014

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