

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

C.M.A.No.1853 of 2012

and M.P.No.1 of 2012

Divisional Manager,
M/s.United India Insurance Co. Ltd.,
No.13/A, Nethaji Road,
Manjakuppam,
Cuddalore 607 001. ... Appellant/II Respondent

Vs.

1.K.Vairamani
2.D.Arivukkarasu ... Respondents 1&2/Petitioner/
1st Respondent

Civil Miscellaneous Appeal preferred against the Judgment and decree dated 13.07.2011 made in M.C.O.P.No.269 of 2008 on the file of the learned Motor Accidents Claims Tribunal, [Addl. Subordinate Judge], Cuddalore.

For Appellant : Mr.J.Chandran
For 1st Respondent : Mr.A.N.Viswanatha Rao

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Insurance Company as against the judgment and decree dated 13.07.2011 made in M.C.O.P.No.269 of 2008 on the file of Motor Accidents Claims Tribunal [Addl. Subordinate Judge], Cuddalore.

2. On 24.10.2007 at 8.00 p.m., when the claimant/1st respondent was travelling as a pillion rider in the 2nd respondent's motorcycle bearing Registration No.TN-31-F-8012 on Kurinjipadi-Cuddalore Road at Vizhapallam, the rider of the motorcycle drove the vehicle at a very high speed, in a rash and negligent manner, and hit against another motorcycle bearing Registration No.TN-31-Y-3557, thereby he sustained grievous injuries and multiple fractures. Claiming compensation to the tune of Rs.5,00,000/-, the claimant approached the Tribunal by filing M.C.O.P.No.269 of 2008.

3. The Tribunal based on the oral evidence of the witnesses and the documentary evidence, 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 3000x12monthsx20%x15 years	Rs.1,08,000/-
2	Pain and suffering	Rs. 30,000/-
3	Loss of income during the treatment	Rs. 6,000/-
4	Medical expenses	Rs. 15,000/-
5	Transport expenses	Rs. 10,000/-
6	Extra nourishment and damage to articles	Rs. 25,000/-
	Total	Rs.1,94,000/-

Aggrieved over the said award, the Insurance Company has come forward with this appeal.

4. Heard the learned counsel for the appellant and the learned counsel who took notice for the claimant.

5. In an accident which took place on 24.10.2007, a 37 year old man working as a Driver, sustained injuries viz., fracture in right leg below knee and injury in right shoulder. The Doctor assessed his disability at 50%. The Tribunal, after considering the evidence on record, more particularly the evidence of P.W.2 - Doctor and scrutinizing all the exhibits viz., Exs.P1 to P9, awarded a sum of Rs.1,94,000/- as compensation to the claimant, which according to the appellant/Insurance Company, is excessive.

6. On a perusal of the award, it is seen that the Tribunal has granted compensation towards "loss of income" and also towards "disability". The compensation granted under the head of disability, cannot be justified. However, taking note of the nature of the injuries sustained by the claimant, this Court is of the view that his percentage of disability can be fixed at 10% and a sum of Rs.3,000/- per percentage can be granted as per the dictum laid by the Apex Court. This Court is also of the view that all other amounts granted by the Tribunal under all other heads are reasonable. That apart, the percentage of interest granted by the Tribunal is also confirmed.

7. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl .N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.1,08,000/-	Rs. 54,000/-
2	Pain and suffering	Rs. 30,000/-	Rs. 25,000/-
3	Loss of income during the treatment	Rs. 6,000/-	Rs. 6,000/-
4	Medical expenses	Rs. 15,000/-	Rs. 15,000/-
5	Transport expenses	Rs. 10,000/-	Rs. 10,000/-
6	Extra nourishment and damage to articles	Rs. 25,000/-	Rs. 25,000/-
	Total	Rs.1,94,000/-	Rs.1,35,000/- -

8. The Appellant/Insurance Company is directed to deposit the entire award amount now granted by this Court together with proportionate costs and interest @ 7.5% per annum from the date of claim petition, to the credit of M.C.O.P.No.269 of 2008 on the file of the Motor Accidents Claims Tribunal, Cuddalore, if not already deposited within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the 1st respondent/ claimant is entitled to make necessary application to withdraw the same. The excess amount if any lying in deposit, if already deposited, shall be refunded to the Insurance Company. It is made clear that excess Court fee paid, if any, shall also be refunded.

The Civil Miscellaneous Appeal is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

gya

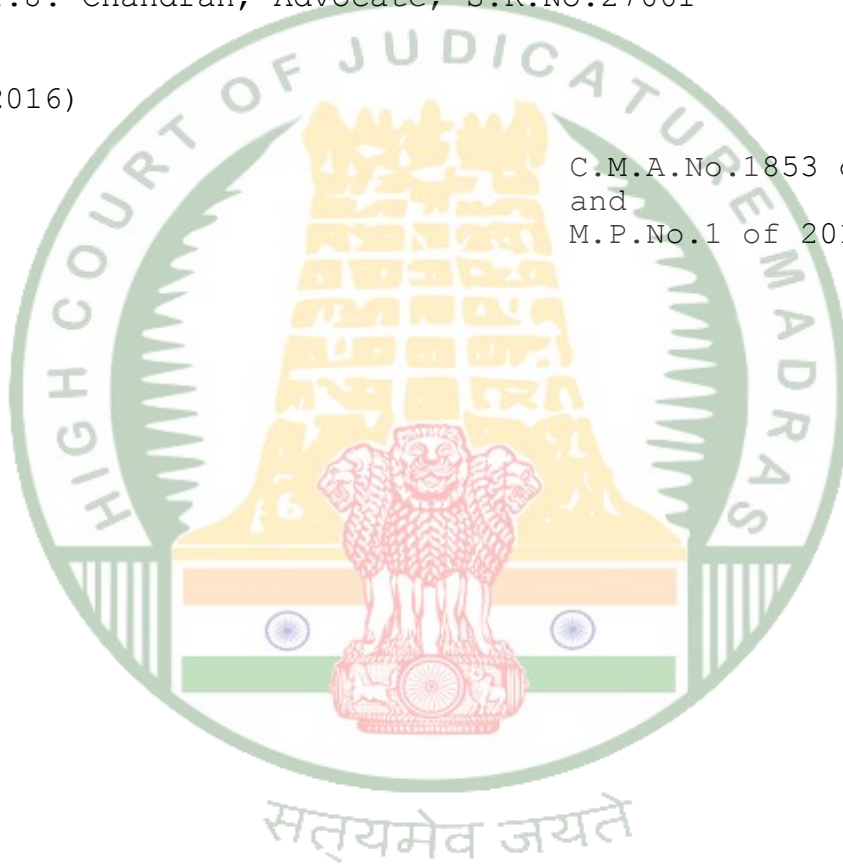
To

1. The Motor Accidents Claims Tribunal,
[Addl. Subordinate Judge], Cuddalore.
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.A.N. Viswanathan Rao, Advocate, S.R.No.27670
+1cc to Mr.J. Chandran, Advocate, S.R.No.27661

SKS (CO)
EU(16/06/2016)

C.M.A.No.1853 of 2012
and
M.P.No.1 of 2012



WEB COPY