

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No.1076 of 2017

&

C.M.P.No.5371 of 2017

United India Insurance Co.Ltd.,
Branch Office,
Erode.

.. Appellant/2nd Respondent

Vs.

1. Saravanan

.. 1st Respnodent/claimant

2. J.Arputham

(R2 set ex-parte before
the court below)

.. 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as against the judgment and decree dated 22.04.2009 passed in M.C.O.P.No. 410 of 2006, on the file of Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.T.Ravichandran

For Respondent-1 : Mr.M.Selvam

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J U D G M E N T

This appeal has been preferred by the Insurance Company against the award of Rs.5,43,976/- for the injuries sustained by the respondent/claimant in an accident which occurred on 22.09.2005, when he was travelling in a TVS Champ which was hit by the lorry insured with the appellant insurance company. Therefore, the claim petition. On enquiry, the Tribunal found that the lorry was driven rash and negligently and determined the

disability at 70% and applied multiplier, awarded a sum of Rs.5,43,976/-. The said award is being challenged before this Court.

2. Heard Mr.T.Ravichandran, learned counsel for the appellant.

3. Though it is contended that the Tribunal erred in holding that the lorry was driven rash and negligently, taking into consideration the filing of FIR, Ex.P1 against the driver of the lorry, evidence of P.W.1, the injured, in the absence of any contra evidence on the side of the appellant, rightly concluded that the accident occurred because of the rash and negligent driving of lorry.

4. With regard to the disability based on the evidence of P.W.2, Doctor Mr.V.Krishnamoorthi and considering the fracture of left femur bone and left tibia bone, and also the inability of the claimant to stand for a long time, sit and squat and to do hard work, based on medical records rightly determined the disability on 70%. Moreover, there is no contra expert evidence in this regard.

5. The Tribunal taking into consideration 70% disability sustained by the claimant and his inability to do normal work and the consequential loss of income, rightly applied the multiplier to assess loss of income. Rs.3,000/- determined as monthly income to the injured is very reasonable. Further, 1/3rd was wrongly deducted towards personal expenses which is applicable only with regard to the fatal case and therefore, the deduction of 1/3rd towards personal expenses is set aside. The multiplier according to the age of the injured namely 48 years is '13' and the loss of income would be $3000 \times 12 \times 13 \times 70/100 = 3,27,600/-$. Therefore, Rs.2,40,000/- awarded towards loss of income is enhanced to Rs.3,27,600/-. Rs.25,000/- towards Pain and Suffering, Rs.10,000/- towards Extra Nutrition, Rs.5,000/- towards Attender Charges and Rs.15,000/- towards Loss of Amenities, Rs.2,38,476/- towards medical bill series as per Exs.P4 and P13 series and Rs.10,500/- towards Transport expenses as per Ex.P15 are all confirmed. The award of Rs.5,43,976/- is enhanced to Rs.6,31,576/- even while dismissing the appeal filed by the insurance company re-appreciating the evidence on record Order 41 Rule 33 and Section 151 C.P.C. for which this court has got power and jurisdiction. Appeal is dismissed with enhancement as aforesaid.

6. The amount awarded by the tribunal already deposited by the appellant. However, for the enhanced amount, the appellant is directed to deposit within a period of four weeks from the date of receipt of a copy of this order. On such

deposit, the first respondent/claimant is permitted to withdraw the same. Consequently, connected miscellaneous petition is closed.

7. It is made clear that based on the contention of the appellant alone, this judgment has been passed and this will not act as a res judicata for the claimant to file an appeal, if he is aggrieved over the quantum of compensation awarded.

Sd/-
Assistant Registrar(CS-viii)

//True Copy//

Sub Assistant Registrar

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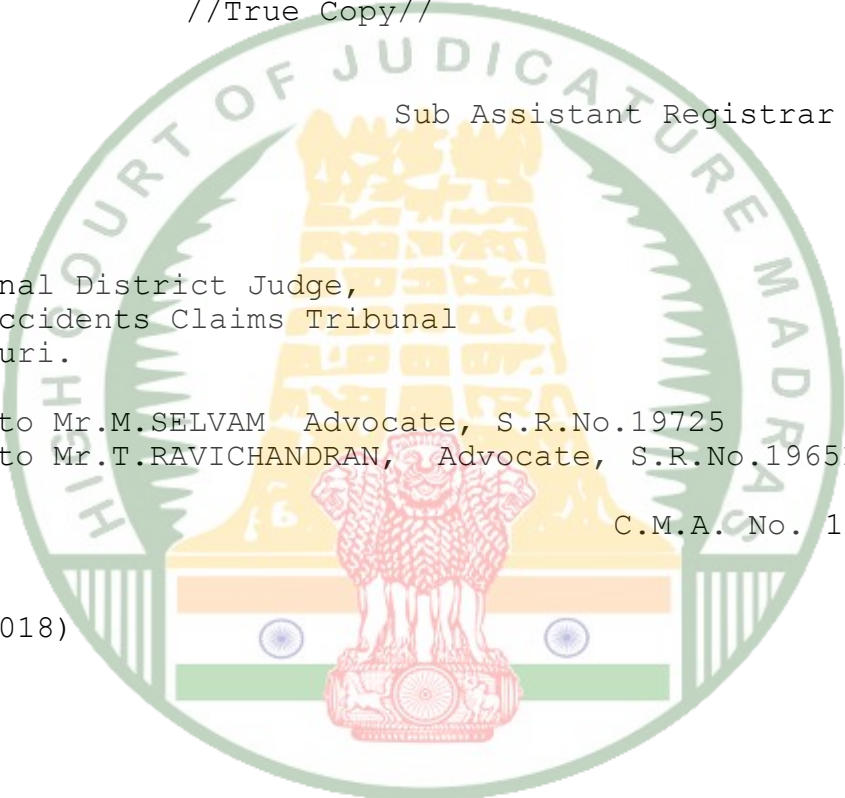
1. Additional District Judge,
Motor Accidents Claims Tribunal
Dharmapuri.

+1cc to Mr.M.SELVAM Advocate, S.R.No.19725

+1cc to Mr.T.RAVICHANDRAN, Advocate, S.R.No.19651

C.M.A. No. 1076 of 2017

TM(CO)
TR(23/02/2018)



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