

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.815 OF 2015

AND

M.P.NO.1 OF 2015

The Divisional Manager

United India Insurance Co. Ltd.,

Divisional Office

No.1170, Mettur Road, 2nd Floor,

Muthiah Complex,

Erode - 11.

.... Appellant/2nd Respondent

Versus

1.Vediappan

2.K.N.Muthusamy

.... Respondents/Petitioner &

1st Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.02.2013 made in M.C.O.P.No.357 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.S.Arun Kumar
For Respondent-1 : Mr.M.Sivakumar
for Mr.C.Prabakaran
R2 : Remained exparte
before Tribunal

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award of compensation made by the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Krishnagiri, in MCOP No.357 of 2006, dated 26.02.2013, the United India Insurance Company Limited has preferred the above appeal.

2. On 27.06.2006, the claimant / first respondent herein and 2 others, while returning to Salem from Coimbatore, in Tata Indica Car, bearing Registration No.TN30-J-4371 cautiously, at about 24.00 hours, a Tata 407 Tempo, bearing

Registration No.TN33-D-9398, belonging to the second respondent herein, driven by the Driver in a rash and negligent manner, without observing any rules, in an uncontrollable speed, dashed against the Car. Except the claimant / first respondent herein, other two persons died pursuant to the injuries sustained by them and the claimant has sustained grievous injuries. Police has registered a case against the Driver of the Tempo in Crime No.411/2006 under Sections 279, 338 and 304(A) IPC.

3. The claimant / first respondent herein, underwent operation for the trochantric fracture with fracture shaft of left femur and dento alveolar fracture lower jaw at Vinayaka Mission Hospital, Salem. He filed a claim petition for compensation for a sum of Rs.35,18,000/- restricted to Rs.25,00,000/-, before the Motor Accidents Claims Tribunal of Dharmapuri at Krishnagiri.

4. The appellant insurance company has filed a counter affidavit denying the allegations of negligence and liability, before the Tribunal.

5. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.4 have let in evidence and 20 documents were marked as Exs.A1 to A20. On the side of the respondent, one witness had let in evidence as R.W.1 and a rough sketch was marked as Ex.B1.

6. On the basis of the materials, oral and documentary evidence available before the Tribunal, the Tribunal has concluded that the driver of the Tempo Van, belonging to the second respondent herein, was rash and negligent in driving the vehicle. The offending vehicle is covered by insurance policy - Ex.A5 and therefore, insurance company is liable to pay the compensation.

7. In so far as the quantum is concerned, the Tribunal has awarded a sum of Rs.13,30,187/- as compensation, under various heads. For loss of earning, the Tribunal, on the basis of Ex.A13 - income tax returns of the claimant for the years 2003, 2004 and 2005, has arrived at Rs.39,187/- as income per month. However, the income tax returns for the year 2006-2007 was not filed. The claimant claimed himself as a Contractor and has filed Ex.A11, the work order issued by the Divisional Engineer for laying road and Ex.A12 - solvency certificate in support of the proof of his income. However, the Tribunal has fixed the monthly income at Rs.8,000/-. On the basis of the evidence of P.W.2 - Doctor and Exs.A15 and A17, assessed the disability at 85%. At the time of accident, the claimant was 42 years as indicated in Ex.A13 - income tax returns. The corresponding multiplier for 42 years as per Second Schedule of Motor Vehicles Act is 15. Therefore, applying the multiplier, the loss of income was arrived at Rs.12,24,000/- (Rs.8,000/- X

12 X 15 X 85/100).

8. Considering the repeated surgeries, the Tribunal awarded Rs.50,000/- towards pain and suffering. As per Ex.A10, a sum of Rs.26,187/- was awarded towards medical bills. Rs.10,000/- each was awarded towards nutrition, transportation and attender charges.

9. The learned counsel appearing for the insurance company would contend that the compensation awarded is huge and the assessment of disability is not done by an expert Doctor.

10. The Tribunal has adopted multiplier method and awarded a sum of Rs.13,30,187/-. However, when the matter was taken up before this Court for hearing, the learned counsel appearing for the insurance company and the claimant have arrived at a consensus and accepted for modification of the award. On the basis of the consensus arrived, the award is modified as under:

Loss of income	-	Rs.1,60,000.00
For permanent disability (3000 X 85)	-	Rs.2,55,000.00
Pain and suffering	-	Rs.1,00,000.00
Medical expenses	-	Rs. 26,187.00
Loss of amenities (loss of teeth)	-	Rs. 50,000.00
Transport	-	Rs. 25,000.00
Extra nutrition	-	Rs. 20,000.00
Attender charges	-	Rs. 20,000.00
Total	-	Rs.6,56,187.00

Accordingly, the total compensation is determined as Rs.6,56,187/-.

11. The learned counsel appearing on either side submitted that the entire award amount has already been deposited by the insurance company with proportionate interest and the claimant / first respondent herein also has withdrawn 50% of the amount deposited.

12. Now by way of consensus, the award amount is reduced from Rs.13,30,187/- to Rs.6,56,187/-. Therefore, the appellant insurance company is entitled for a refund of the balance amount with proportionate interest.

13. In the result, the Civil Miscellaneous Appeal is allowed in part and the appellant insurance company is permitted to get refund of the balance amount deposited. The claimant/first respondent herein, is also permitted to withdraw

the balance amount, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

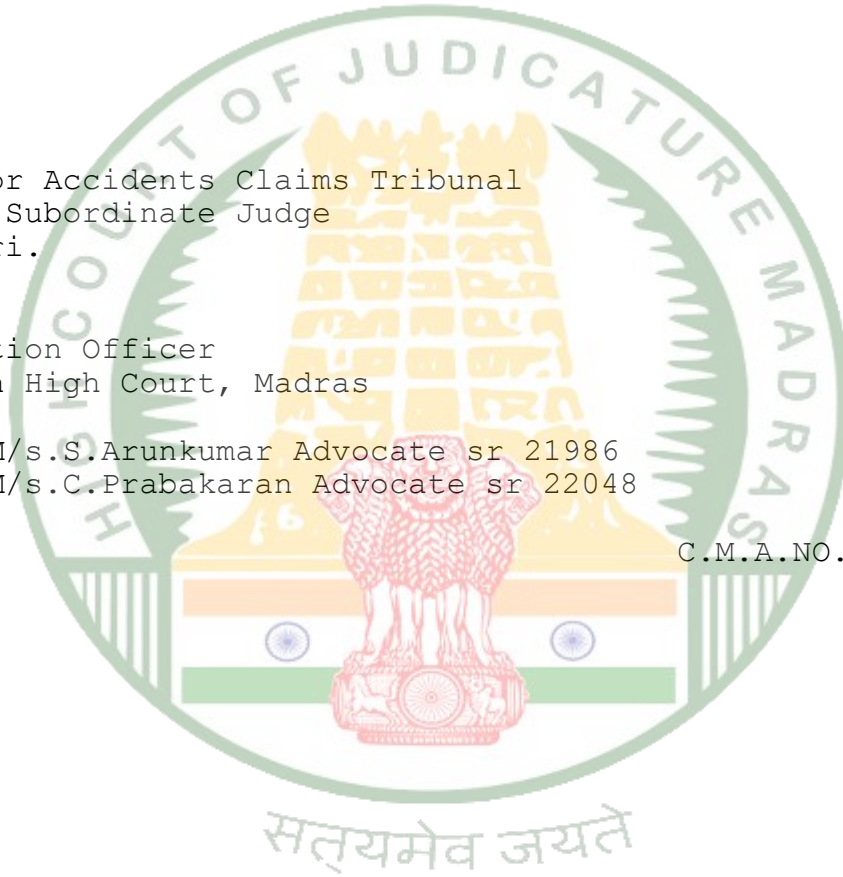
1.The Motor Accidents Claims Tribunal
Principal Subordinate Judge
Krishnagiri.

2.The Section Officer
VR Section High Court, Madras

+1 cc to M/s.S.Arunkumar Advocate sr 21986
+1 cc to M/s.C.Prabakaran Advocate sr 22048

C.M.A.NO.815 OF 2015

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