

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.238 of 2017

The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai 600 001.

... Appellant/2nd Respondent

Vs.
1. E.Jayakumar ...1st Respondent/Claimant
2. A.Mohan ...2ndRespondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.04.2016 made in M.C.O.P.No.198 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruttani.

For Appellant : Mr.G.Anandan

For 1st Respondent : Mr.K.Varadha Kamaraj

J U D G M E N T

The Insurance Company has come up with this appeal mainly challenging the quantum of compensation awarded by the Tribunal.

2. It is the case of the claimant that on 19.06.2013, about 10.50 hours, when he was driving his Auto bearing Reg.No.TN-02-AR-0735 from Anna Nagar 'A' Block towards Chinthamani South, near 12th Main road and 11th Main road junction, the 1st respondent's Indica Car bearing Registration No.TN-20-CB-9061, which came from west to east direction in a rash and negligent manner, dashed against his Auto, due to which he sustained multiple and grievous injuries. Contending that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent's vehicle, the injured claimant filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.2,15,000/- as compensation under the following heads:

Heads	Amount
Disability	Rs.1,35,000.00
Transportation	Rs. 15,000.00
Extra Nourishment	Rs. 15,000.00
Pain and suffering	Rs. 30,000.00
Loss of income	Rs. 20,000.00
Total	Rs.2,15,000.00

4. Learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in awarding excessive compensation to the claimant, when the injuries sustained by him are simple in nature.

5. Though the injured claimant claims that he is an auto driver, since no proof is furnished in support of his avocation, the Tribunal notionally fixed his income at Rs.5,000/- per month. Since the accident is of the year 2013, this Court finds no error in the fixation of the claimant's monthly income, taking into account the escalating price index.

6. As far as the disability aspect is concerned, it is seen from the records that the claimant has sustained injury over his left eye, due to which the eyelids have contracted and he has further sustained fracture in the left leg joint, due to which movement of the leg is reduced to 50%. P.W.2, Doctor has assessed 10% disability for the eye injury and 35% disability for the leg injury, in all, the permanent disability of the injured claimant was assessed at 45%. Since there is no evidence to show that the claimant sustained 10% permanent disability due to the eye injury, the same cannot be accepted. However, this Court confirms the permanent disability sustained by the claimant at 35% for the leg injury. Accordingly, the modified compensation under the head 'Disability' is arrived at a sum of Rs.1,05,000/- (Rs.3,000/- x 35%).

7. Now, coming to the compensation awarded by the Tribunal, this Court finds that the quantum awarded under the heads 'Transportation', 'Extra nourishment', 'Pain and suffering' and 'Loss of income' are on the lower side.

Accordingly, this Court enhances the compensation under the said heads, as under:

Heads	Amount
Transportation	Rs. 25,000.00
Extra Nourishment	Rs. 25,000.00
Pain and suffering	Rs. 40,000.00
Loss of income for 6 months (Rs.5000/- x 6)	Rs. 30,000.00

8. In fine, the compensation awarded by the Tribunal under various heads is modified and enhanced to a sum of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only). Break-up details of the revised award, are as under:

Heads	Compensation awarded by the Tribunal	Revised Compensation
Disability	Rs.1,35,000.00	Rs.1,05,000.00
Transportation	Rs. 15,000.00	Rs. 25,000.00
Extra Nourishment	Rs. 15,000.00	Rs. 25,000.00
Pain and suffering	Rs. 30,000.00	Rs. 40,000.00
Loss of income	Rs. 20,000.00	Rs. 30,000.00
Total compensation	Rs.2,15,000.00	Rs.2,25,000.00

9. In view of the above, the compensation awarded by the Tribunal is modified and the claimant is entitled to a sum of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) as compensation along with interest at 7.5% per annum from the date of filing the claim petition till the date of realization, except the default period, if any. It is made clear that if no amount is deposited so far, the appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest to the credit of M.C.O.P.No.198 of 2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruttani, within a period of six weeks from the date of receipt of a copy of this order.

10. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016, scrupulously.

This Civil Miscellaneous Appeal is dismissed with the above direction. No costs. Consequently, connected C.M.P.No.1588 of 2017 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

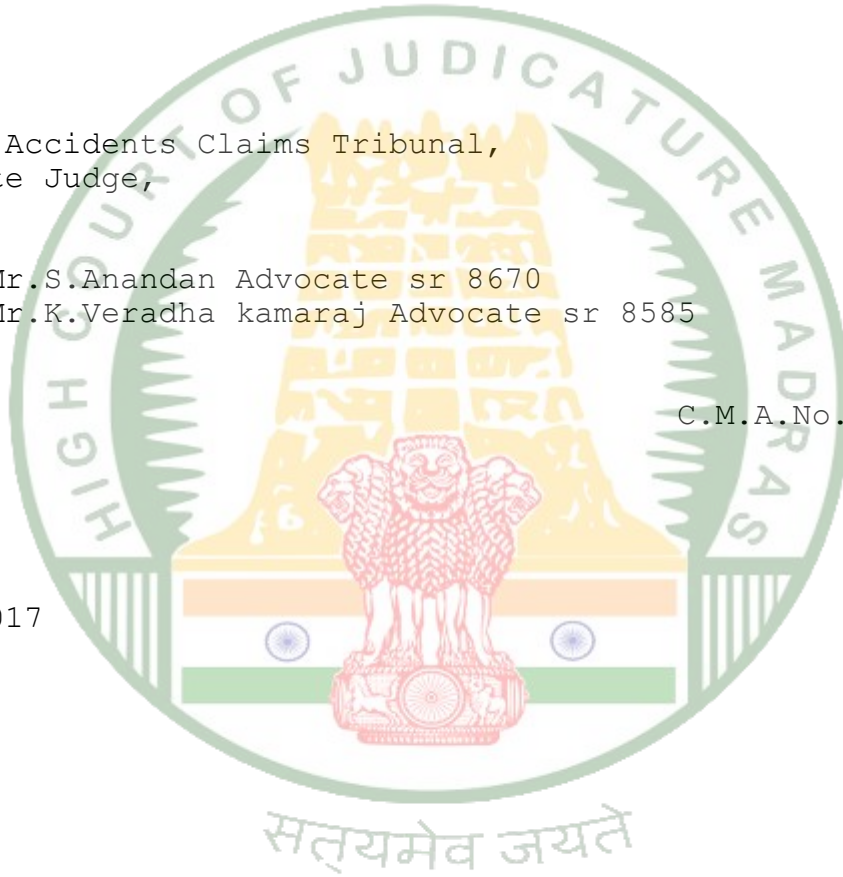
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To :

The Motor Accidents Claims Tribunal,
Subordinate Judge,
Tiruttani.

+1 cc to Mr.S.Anandan Advocate sr 8670
+1 cc to Mr.K.Veradha kamaraj Advocate sr 8585

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