

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.02.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.364 of 2017
and C.M.P.No.2589 of 2017

Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office-2, Sundar Arcade,
B.N.Road, Opp. Sub-Urban Bus Stand,
Mysore 570 001. ... Appellant/2nd Respondent

Vs.

1.B.Ravikumar
2.P.Samraj ... Respondents/Petitioner/1st Respondent

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.01.2005 made in M.A.C.T.O.P.No.782 of 2002 on the file of the Motor Accident Claims Tribunal, [Subordinate Judge], Krishnagiri.

For Appellant : Mr.K.Suryanarayanan

J U D G M E N T

The award dated 04.01.2005 passed in M.A.C.T.O.P.No.782 of 2002 by the file of the Motor Accident Claims Tribunal, [Subordinate Judge], Krishnagiri, is being challenged in the present Civil Miscellaneous Appeal.

2.The appeal has been filed by the Insurance Company, challenging not only the quantum of compensation but also the involvement of the vehicle in the accident.

3.The claimant Ravikumar, aged 31 years, a student studying M.B.B.S., met with an accident on 06.12.2001. He filed a claim petition in M.A.C.T.O.P.No.782 of 2002 on the file of the Motor Accident Claims Tribunal, [Subordinate Judge], Krishnagiri, claiming a sum of Rs.10,00,000/- as compensation.

4.The Tribunal, on appreciation of oral and documentary evidence, awarded a sum of Rs.4,90,000/- as compensation, the break up details of which are as under :

i. For simple and grievous injuries Rs.1,00,000/-

ii. Medical expenses	Rs. 75,000/-
iii. Future Medical expenses	Rs. 40,000/-
iv. Transport expenses	Rs. 10,000/-
v. Nourishment	Rs. 5,000/-
vi. Cost of attendant	Rs. 5,000/-
vii. Damages to articles	Rs. 5,000/-
viii. Permanent disablement	Rs. 1,00,000/-
ix. Pain and suffering	Rs. 1,00,000/-
x. Loss of earning capacity	Rs. 50,000/-

Total	Rs. 4,90,000/-

5. Learned counsel appearing for the appellant submits that the compensation of Rs. 1,00,000/- awarded towards permanent disablement and Rs. 50,000/- towards loss of earning capacity is high. It is also contended that the quantum of Rs. 1,00,000/- awarded under the head pain and suffering by the Tribunal is also excessive.

6. It is but necessary to peruse the injuries sustained by the claimant and the period of treatment undergone by the claimant, and the impact of those injuries would have effect on the future life of the claimant so as to enable this Court to assess the damages awarded under the respective heads. The claimant was pursuing his studies as a Doctor. In the accident, the claimant has suffered fracture in the left knee and has taken treatment at Mysore. The nature of injuries suffered by the claimant put in jeopardy the functioning of the claimant as a doctor in future. The claimant has also suffered fracture in the left shoulder which would very much hamper his future earning capacity in the profession as doctor. P.W.2, the doctor, who was examined to certify the disability, has assessed the disability at 45%. It is evident that the injuries suffered by the claimant have direct impact on his earning capacity. In such a scenario, the Tribunal ought to have adopted multiplier method for quantification of compensation. But, a meager amount of Rs. 50,000/- has been awarded towards loss of earning capacity. Further, under the loss of earning capacity, the Tribunal has not taken into consideration future prospects. Further, the nature of injuries sustained, the period of treatment undergone and the disability suffered by the claimant all considered in the right perspective unequivocally spell out that the compensation awarded under the head pain and suffering cannot be said to be unreasonable. For the reasons aforesaid, the challenge made by the appellant that the compensation awarded is excessive and unreasonable is liable to be rejected.

7. Learned counsel for the appellant also disputed the involvement of vehicle and consequently, the liability of the Insurance Company to pay compensation on the ground that there

is a delay of 50 days in preferring FIR. Mere delay in lodging the FIR cannot be a ground to contend that the vehicle is not involved in the accident. The injuries suffered by the claimant and the necessity for him to take medical treatment to make himself mobile would have been foremost in his mind, rather than lodging the FIR at the immediate point of time. After taking treatment, the claimant would have lodged the complaint. Without alleging any mala fides on the part of the claimant, mere delay cannot be said to be a ground to reject the claimant's claim for rightful compensation. Further, if delay is pleaded by the insurance company, the necessity for the claimant to implicate the vehicle in the accident ought to have been substantiated and the collusion and fraud of all the persons in raising the claim should have been made out. Mere allegation would not partake the character of proof and in the absence of any oral or documentary evidence to substantiate the said ground, mere allegation cannot be considered to disrobe the claimant of his rightful compensation. Therefore, the contention that the vehicle was not at all involved in the accident is liable to be rejected.

8. For the reasons stated above, the appeal, being devoid of merits, is liable to be dismissed and, accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

9. The Appellant/Insurance company is directed to deposit the entire award amount along with interest and costs as awarded by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

gya/GLN

To

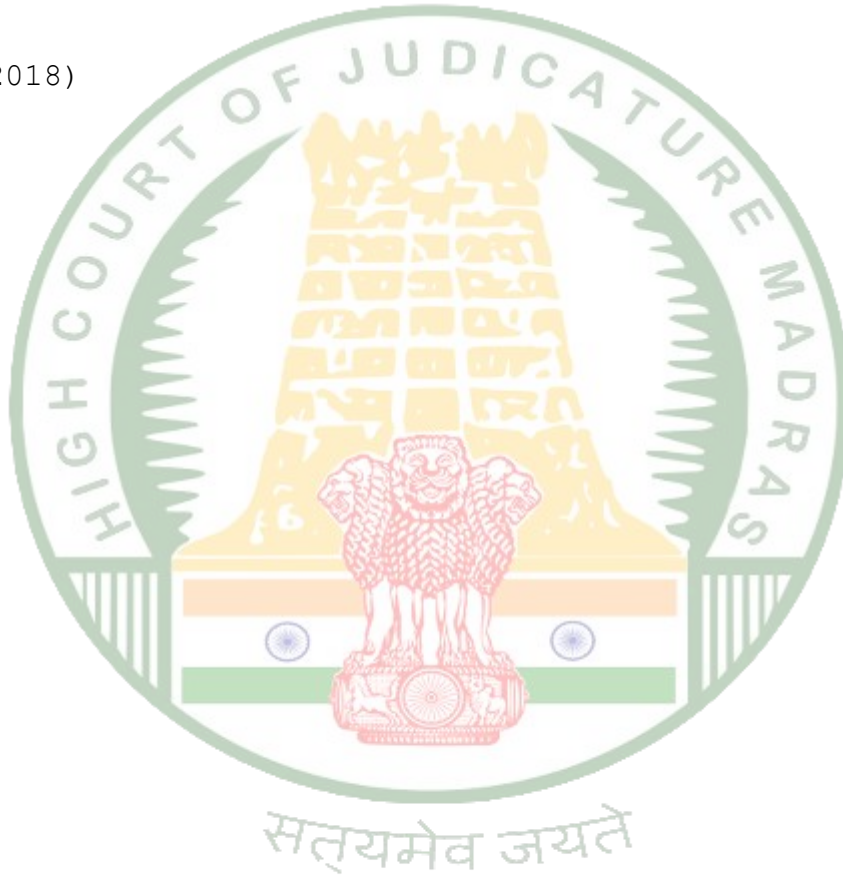
1. The Motor Accident Claims Tribunal [Subordinate Judge],
Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1 CC to Mr.K. Suryanaryanan, Advocate sr 12186.

C.M.A.No.364 of 2017
and
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KS (CO)
SP (08/02/2018)



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