

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.404 of 2017

&

C.M.P.No.2847 of 2017

The New India Assurance Co. Ltd.,
No.46, 2nd Line Beach,
Moore Street, Chennai - 1.

... Appellant/Respondent-2

Versus

1. A.Subramani @ Mani ...1st Respondent/Petitioner
2. R. Santhosh ...2nd Respondent/1st Respondent
(2nd respondent set-exparte in Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.09.2005 made in M.C.O.P.No.2524 of 2001 on the file of the Motor Accident Claims Tribunal, (III Court of Small Causes) of Madras.

For appellant : Mr.S. Manohar

J U D G M E N T

Challenging the finding of negligence as well as quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.2524 of 2001, dated 13.09.2005, the Insurance Company has filed this Appeal.

2. The Claimant, Subramani @ Mani, aged 20 years, a Casual Labour earning a sum of Rs.3,250/- per month met with an accident on 28.11.2000 due to which he sustained fracture of left frontal bone with CSF diffuse exonal injury and right vision problem. Hence, he filed a claim petition in M.C.O.P.No.2524 of 2001, seeking a sum of Rs.5,00,000/- as compensation.

3. The Claims Tribunal on consideration of oral and documentary evidence has awarded a sum of Rs.3,04,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The break-up details of the same are as under:

Future loss of earnings	-	Rs.1,92,000/-
Loss of income for four months	-	Rs. 12,000/-
Transport Expenses	-	Rs. 3,000/-
Extra Nourishment	-	Rs. 4,000/-
Medical Expenses	-	Rs. 3,000/-
Pain and suffering	-	Rs. 10,000/-
Disablement compensation	-	Rs. 80,000/-

Total		Rs.3,04,000/-

4. The learned counsel for the appellant submits that the accident had occurred only due to claimant who negligently rode the bicycle but the tribunal has wrongly held that the driver of the motor cycle drove the vehicle in the rash and negligent manner and caused the accident. It is his further submission that the quantum of compensation awarded by the Claims Tribunal is very high and the same needs to be reduced. The learned counsel for the appellant further contended that after granting a sum of Rs.1,92,000/- towards Loss of earning capacity, the Tribunal ought not to have awarded a sum of Rs.80,000/- towards permanent disablement.

5. A perusal of the award passed by the Claims Tribunal reveals that the Tribunal has considered the evidence of P.W.2-Dr.Rajappa (Opthamalogist) and P.W.3- Dr.S.Gopalan (Neurologist). P.W.2 - Opthamalogist in his evidence has stated the claimant has sustained injury in the right eye and P.W.3 - Dr.S.Gopalan (Neurologist) has stated that the claimant has sustained head injury and there was a swelling in the brain. Considering the above injuries and its impact on the life of the claimant, the Tribunal, while fixing the monthly income of the claimant at Rs. 3,000/- per month, awarded a sum of Rs.12,000/- (4 x 3000) towards Loss of income for four months. However, for fixing the loss of future earning capacity, the Tribunal, fixing the loss of monthly earnings at Rs.2,000/- adopting multiplier of 8, has quantified the compensation at Rs.1,92,000/-.

6. On a careful consideration of the findings arrived at by the Tribunal and the compensation awarded under the heads loss of income and loss of future earning capacity, this Court is of the considered opinion that the Tribunal has applied its mind to the materials available on record and has arrive at a just and reasonable finding and has quantified the compensation, which, by no means, is excessive or disproportionate and, therefore the same is confirmed.

7. Insofar as the compensation awarded towards Pain and suffering, Extra Nourishment, Transport Expenses, Medical expenses, taking into consideration the nature of injuries sustained by the claimant, the period of treatment and the

impact of injuries on the day-to-day living of the claimant, this Court is of the opinion that the compensation awarded under the other non-pecuniary heads, noted above, are also reasonable and, the same requires no interference. Further, it is to be pointed out that the Tribunal has not awarded any amount towards Loss of amenities. Therefore, award of Rs.80,000/- towards disablement compensation, even if considered excessive would go to the head of loss of enjoyment of amenities.

8. It is further to be pointed out that the award is of the year 2001 and the appeal is of the year 2017. Due to efflux of time of more than a decade and a half, the money value has gone down considerably and cost of living has also soared high and, therefore, the quantum of compensation awarded cannot be said to be excessive.

9. Though contention has been raised with regard to fixing of negligence on the driver of the motor cycle, however on a careful analysis of the evidence available on record, it is evident that the Tribunal, relying upon Ex.P-3-First Information Report has rightly fixed the negligence on the part of the driver of the motor cycle. In the absence of any contra evidence to the same, the said evidence cannot be brushed aside. Therefore, the finding on negligence is confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed confirming the Judgment and Decree of the Claims Tribunal in M.C.O.P.No.2524 of 2001, dated 13.09.2005. No costs. Consequently, connected Miscellaneous Petition is closed.

11. The appellant is directed to deposit the entire award amount as quantified by the Tribunal along with interest and costs, 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 order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS III)

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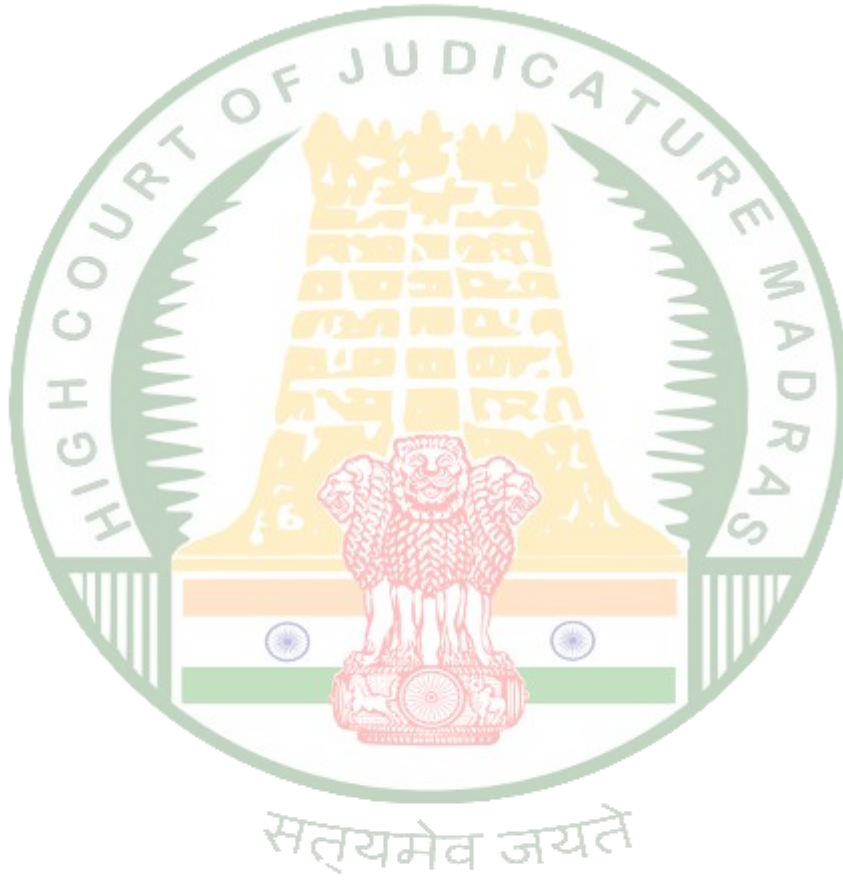
Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(III Judge of Small Causes), Chennai

C.M.A. No.404 of 2017

SSD (CO)
sm:11.4.2018



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