

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.11.2016

Judgment Pronounced on : 04.08.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2342 of 2009
and MP.No.1 of 2009

Bajaj Allianz General Insurance Co. Ltd.,
11, People's Park, 3rd Floor,
Government Arts College Road,
Coimbatore. ...Appellant/2nd Respondent

Vs.

1.Subramaniam ...1st Respondent/Petitioner

2.M/s. Sri Mahalakshmi Dairy
158-A, Vysial Street,
Coimbatore. ...2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the award and decree dated 10.2.2009 made in MCOP.No.652 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, (FTC-4), Tiruppur at Coimbatore.

For Appellant :Mr.S.Arunkumar

For Respondents :Mr.S.S.Swaminathan

JUDGMENT

The insurance company that faces a liability to pay compensation of Rs.3,10,831/- payable with interest at 7.5% per annum for the injury suffered by the claimant/first respondent herein has come forward in this appeal, challenging essentially the quantum of compensation awarded by the Tribunal.

2. On 12.3.2006, at about 16.30 hours while Subramaniam, the claimant, was riding his motor cycle bearing No.TN39-H-8790 along Palladam Vadugampalayam Road, he was knocked down by a van bearing No.TN37-AM-4398 belonging to the second respondent and insured with the appellant, owing to which Subramaniam suffered multiple fractures to his right hand. Seeking a compensation of Rs.6,00,000/-, the claimant approached the Tribunal.

3. The doctor, who assessed the disability has testified as P.W.2 about the fracture to metacarpal bones of the wrist, fracture to right ulna, dislocation of wrist, deformity and loss of muscle of the right hand, besides shortening of the hand. He determined the percentage of disability at 41.9%. The claimant stated to be working as a coolie and claimed that he was earning Rs.10,000/- a month, but the Tribunal has fixed the income notionally at Rs.3,500/- per month. As against the percentage of disability of 41.9% as determined by the doctor, the Tribunal has fixed the disability only at 36% and applying a multiplier of 15, it arrived at a sum of Rs.2,26,800/- as compensation for permanent disability.

4. The learned counsel for the appellant contended that there is no medical evidence worth the material to indicate that the claimant has suffered functional disability to adopt the multiplier method for determining the compensation amount. At any rate, fixing the percentage of disability at 36% itself is disproportionately high, given the nature of injury that the claimant has suffered.

5. It is made clear that no amount of compensation at no point of time can bear any proportion to the actual loss suffered and the actual pain endured. Here is a victim of a road accident whose course of life took a diversion due to the irresponsibility of the driver of the offending vehicle. While compensation amount should not be charitably made, it should not also be insensitively low. The victim here is a coolie by avocation and has suffered permanent deformity to his working hand viz., the right hand, and is it not an adequate demonstration of a material fact to hold if the claimant is functionally disabled? This Court finds that the approach of the Tribunal below is reasonable and there is hardly any material on record to indicate that the Tribunal has been unduly charitable to the victim. In fact, on the head of pain and suffering the Tribunal has granted an insignificant sum of Rs.5,000/-. Does it commensurate with the kind of physical pain and mental agony that the victim would have actually undergone? While one does not expect the insurance company to be sympathetic to the victims of accident, it must also be underscored that it is expected not to be insensitive to human sufferings either.

6. In conclusion, I find no merit in this appeal and hence it is dismissed without costs. The appellant/insurance company is directed to deposit the entire award amount of compensation of Rs.3,10,831/- along with accrued interest @ 7.5% per annum, less if any already deposited, within a period of four weeks from the date of receipt of a copy of this order and the claimant is permitted to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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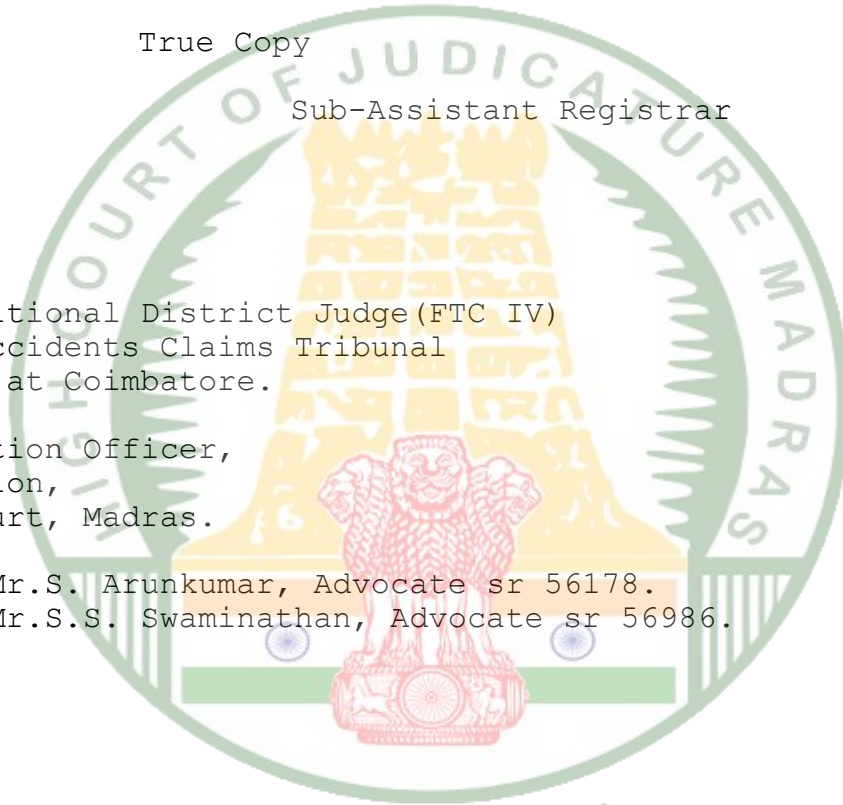
To :

1.The Additional District Judge(FTC IV)
Motor Accidents Claims Tribunal
Tirupur at Coimbatore.

2.The Section Officer,
VR Section,
High Court, Madras.

+1 Cc to Mr.S. Arunkumar, Advocate sr 56178.

+1 Cc to Mr.S.S. Swaminathan, Advocate sr 56986.



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CMA.No.2342 of 2009

SJ(CO)
sp(26/09/2017)

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