

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM
THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.487 of 2012
and
MP.No.1 of 2012

M/s.United India Insurance Co., Ltd.,
No.19/2-A, Junction Main Road,
Salem-5.Appellant/2nd Respondent

Vs.

1. K.Kandasamy1st respondent/Petitioner
2. Ashok Kumar
3. M.Lakshmanaraju2&3 Respondents/1&2 Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.393 of 2004, dated 25.08.2011, on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Court, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan
For R1 : Ms.K.Sandhya
For M/s.Sarvabhauman Associates
For R2 & R3 : Exparte in Tribunal

JUDGMENT

The Insurance Company/3rd respondent in M.C.O.P.No.393 of 2004 on the file of the I Additional Subordinate Judge, Coimbatore is the appellant. The claimant who had suffered fracture of the left femur and hip in an accident that had taken place on 31.07.2002 filed M.C.O.P.No.393 of 2004 for compensation for the injuries sustained by him. This appeal has been preferred by the Insurance Company, challenging the award passed by the Tribunal.

2. The 2nd respondent herein is the driver of the offending vehicle and the 3rd respondent is the owner of the offending vehicle. According to the claimant / 1st respondent, the accident occurred due to the rash and negligence act of the driver / 2nd respondent herein. The appellant is the insurer of the offending vehicle.

3. Having considering the materials made available before it, the Tribunal has come to the conclusion that the accident occurred due to the rash and negligence driving of the driver. As

regards the question of negligence, there is no challenge. The challenge before this Court is as regards the quantum of compensation fixed under several heads.

4. The Insurance Company has not disputed its liability to pay compensation. The Tribunal has awarded a sum of Rs.16,000/- under permanent disability. The 1st respondent / claimant took treatment at Ganga Hospital. He has marked Ex.P5 - Medical Certificate & Ex.P6 - Discharge Summary issued by Ganga Hospital, Coimbatore. P.W.2, the Doctor has assessed the disability of the claimant at 10%, Ex.P9 is the Disability Certificate. The claimant took treatment as in-patient for nine days in Ganga Hospital, Coimbatore. The disability was assessed at 10%. The claimant was aged about 55 years at the time of accident and a business man. He suffered grievous fractures to left femur and hip. It would certainly affect the claimants' earning capacity and therefore the claimant is entitled to Rs.30,000/- under the head of Disability.

5. The Tribunal has awarded Rs.50,000/- towards medical expenses, that was not challenged by the appellant. Having regard to the period of hospitalization and the nature of the injuries it cannot be stated that the amount fixed under the head of medical expenses at Rs.50,000/- is on the higher side.

6. The Tribunal has awarded Rs.1,50,000/- for future medical expenses. The Tribunal relied on the evidence of PW2, the Doctor who speaks about the necessity of fixing of artificial limb. The claimants appears to be slightly on the higher side. He is entitled to Rs.60,000/- under this head.

7. The Tribunal has awarded Rs.4,500/- for medical attendant. The claimant was in-patient for nine days hence compensation under this head should be fixed at Rs.9,000/-. The Tribunal has awarded Rs.10,000/- under the head of pain and suffering. Considering the period of hospitalization and the nature of injuries, I am of the view that the claimant is entitled to Rs.30,000/-.

8. The Tribunal has awarded Rs.5,000/- under the head of loss of earnings. It appears to be too low. As already noticed, he was a business man. The learned counsel appearing for the appellant has no serious objection to fix the amount at Rs.25,000/-. The Tribunal has awarded Rs.1,000/- for transportation. The claimant was taken to the hospital from the place of accident and from there he was taken to his residence. Therefore under the head of transportation, the appellant is entitled to Rs.5,000/-. The Tribunal has awarded Rs.500/- under the head of Extra Nourishment. Having regard to the period of hospitalization, I hold the claimant is entitled to Rs.3,000/- under the head of Extra Nourishment. Due to the injuries, there would be loss of amenities, which has not been considered by the Tribunal. Hence, this Court is inclined to award Rs.25,000/- for Loss of amenities.

9. The compensation amount awarded by the Tribunal :

Permanent Disability	Rs.16,000
Medical Expenses	Rs.50,000
Future Medical Expenses	Rs.1,50,000
Medical Attendant	Rs.4,500
Pain and Suffering	Rs.10,000
Loss of Earnings	Rs.5,000
Transportation	Rs.1,000
Extra Nourishment	Rs.500
Total	Rs.2,37,000

is re-assessed as follows:

Permanent Disability	Rs.30,000
Medical Expenses	Rs.50,000
Future Medical Expenses	Rs.60,000
Medical Attendant	Rs.9,000
Pain and Suffering	Rs.30,000
Loss of Earnings	Rs.25,000
Transportation	Rs.5,000
Extra Nourishment	Rs.3,000
Loss of amenities	Rs.25,000
Total	Rs.2,37,000

10. In the above circumstances, the appeal of the Insurance Company is dismissed and the award of the Tribunal for Rs.2,37,000/- with interest at 7.5% is confirmed. The insurer has already deposited the entire award amount as per order in MP.No.1 of 2012 in CMA.No.487 of 2012 dated 11.04.2012.

The claimant shall be entitled to withdraw the award amount lying to the credit of the claim petition. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

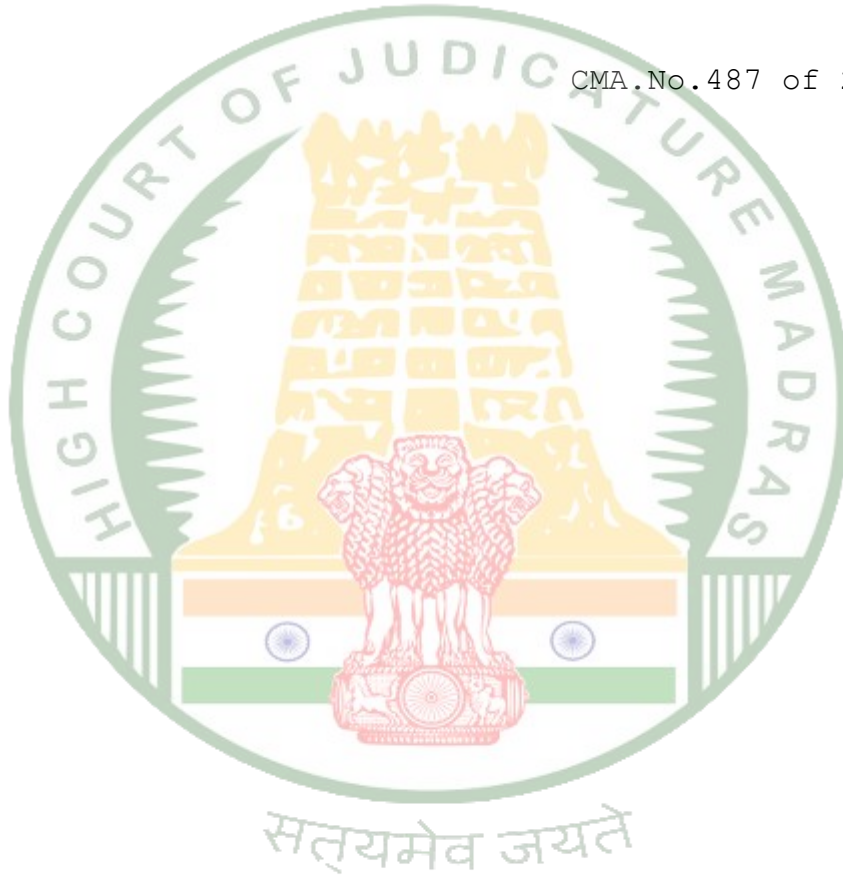
1.The Motor Accidents Claims Tribunal,
Sub Court, Coimbatore.

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

+1 cc to M/s.Sarvabhauman Associates,sr.9299.

vgi(co)
krd 3/4

CMA.No.487 of 2012



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