

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.419 of 2017

and

CMP.No.2871 of 2017

United India Insurance Co. Ltd

Branch Office,

No.17, G.P.M. Chetty Street,

Ambapuram, Gudityattam Vellore District.

... Appellant/2nd Respondent

versus

1. C.Balakrishnan

2. D.Subramaniam

...Respondents/Petitioner/

1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 23.11.2009 made in M.C.O.P.No.86 of 2006, on the file of The Motor Accidents Claims Tribunal, Subordinate Judge, Gudiyatham.

For appellant : Mr.S.Arunkumar

For Respondents: No appearance (R1 and R2)

J U D G M E N T

Challenging the liability fixed by the Claims Tribunal as well as the quantum of compensation awarded in M.C.O.P.No.86 of 2006, the Insurance Company has filed this Civil Miscellaneous Appeal.

2. The Claimant, Balakrishnan, aged 50 years, a retired army personnel and at present a driver, earning a sum of Rs.7,000/- per month, met with an accident on 16.09.2005 due to which he sustained grievous injuries. Hence, he filed a Claim Petition in M.C.O.P.No.86 of 2006, claiming compensation for a sum of Rs.5,00,000/-.

3. The Claims Tribunal, on consideration of oral and documentary evidence awarded a sum of Rs.1,64,000/-, under the following heads :-

Permanent disability - Rs.70,000/-

Pain and suffering and

mental agony

- Rs.30,000/-

Medical expenses	-	Rs.61,926.73/-
Extra Nourishment	-	Rs. 2,000/-

		Rs.1,64,000/-

4. The learned counsel for the appellant submits that the claimant was under the influence of alcohol at the time of accident and, therefore, the claimant is the cause of the accident and the insurance company is not liable to pay the compensation. It is further submitted that even otherwise, the compensation awarded under the head permanent disability and pain and suffering are on the higher side and the compensation needs to be reduced.

5. A perusal of the award passed by the Claims Tribunal reveals that the Claims Tribunal, relying upon the evidence of the claimant, who examined himself as P.W.1 and EX.P1- copy of the F.I.R. has rightly fixed the liability on the part of the driver of the lorry. No evidence to substantiate that the claimant was under the influence of alcohol has been adduced by the insurance company. In the absence of any documentary evidence, the finding of the Tribunal that the driver of the lorry was the cause for the accident cannot be found fault with and, accordingly, the finding rendered by the Tribunal is confirmed.

6. Insofar as the quantum of compensation awarded by the Claims Tribunal is concerned, the Claims Tribunal considering the nature of injury and period of treatment and the impact of the injuries on the future life of the claimant, has awarded just and reasonable compensation under the heads permanent disablement, pain and suffering and extra nourishment. The compensation, which have been awarded, in the facts and circumstances of the case cannot be said to be excessive. No compensation has been granted under the head loss of earning capacity by adopting multiplier method. Medical expenses has been awarded on actuals on the basis of bills. In such circumstances, the compensation awarded by the Tribunal, in the considered opinion of this Court is not excessive and the same does not call for interference.

7. For the reasons aforesaid, there being no merits, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree of the Claims Tribunal, in M.C.O.P.No.86 of 2006. No costs. Consequently, connected Miscellaneous Petition is closed.

8. The appellant/insurance company is directed to deposit the award amount as quantified by the Tribunal, less the amount, if any, already deposited, along with interest as ordered by the Tribunal, 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, the Tribunal shall

transfer the same to the bank account of claimant directly through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VII)

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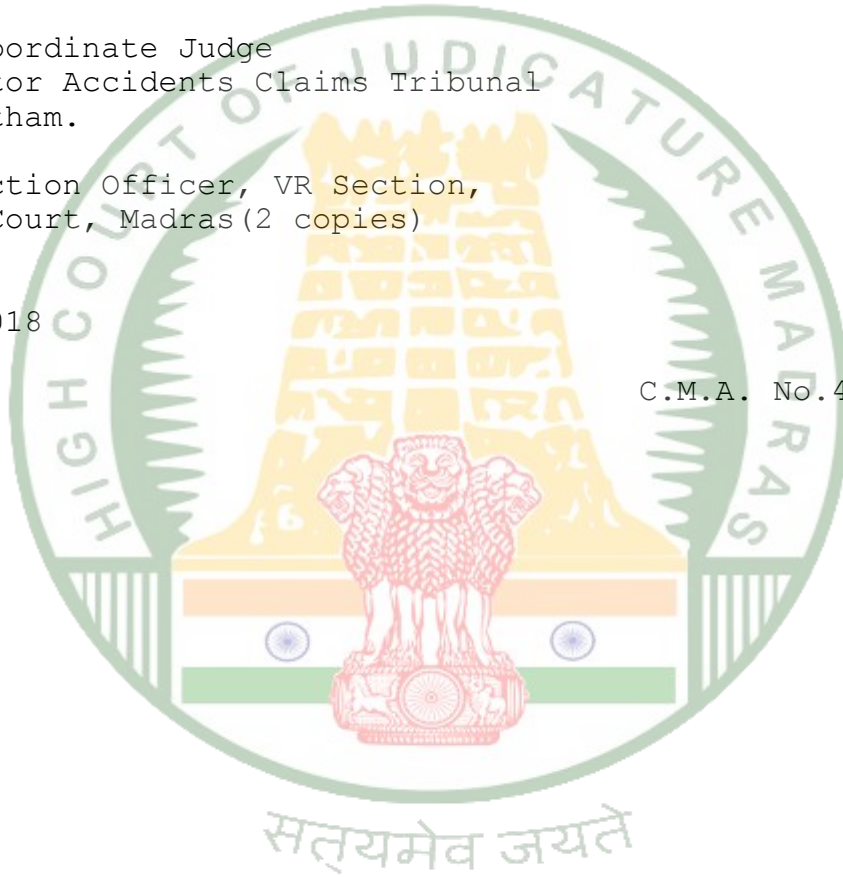
Sub Assistant Registrar

To

1. The Subordinate Judge
The Motor Accidents Claims Tribunal
Gudiyatham.
2. The Section Officer, VR Section,
High Court, Madras (2 copies)

KK(CO)
sm:22.3.2018

C.M.A. No.419 of 2017



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