



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.12.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1447 of 2016

Gopal

... Appellant

Vs.

1.S.Kannan

2.M/s.The New India Assurnce

Co. Ltd., rep. by its
Divisional Manager,
Divisional Office, Rekha Towers,
248-B, Kamarajar Salai,
Madurai - 625 009.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to modify the award dated 15.12.2015 made in M.C.O.P.No.1071 of 2013 on the file of the IV Additional Sub Judge, Madurai.

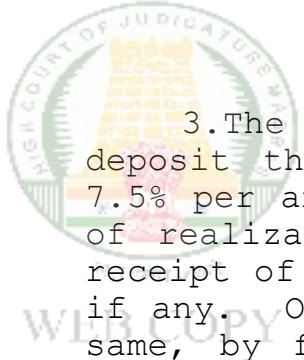
For Appellant
For Respondents

: Mr.A.Theethar
: Mr.D.Ramesh Kumar for R1
Mr.J.S.Murali for R2

JUDGMENT

The claimant has filed this appeal aggrieved by the fastening of negligence on him and correspondingly reducing the compensation payable to him. The claimant was riding an Auto. It was involved in a collision with two wheeler insurance company with the second respondent herein. The claimant suffered injuries. The Tribunal awarded a sum of Rs.2,11,509/-. Since the claimant was found to be equally negligent, it was held that the second respondent was liable to pay only a sum of Rs.1,05,755/- to the claimant. Aggrieved by the reduction of compensation by fastening of negligence on him, the claimant has preferred this appeal.

2.The learned counsel for the appellant pointed out that the claim petition was filed under 163-A of Motor Vehicles Act. In view of the nature of proceedings instituted by the claimant, the question who was at fault was foreign to the scope of the enquiry. This has been authoritatively upheld in the recent decision of the Hon'ble Supreme Court in Civil Appeal No.9694 of 2013 dated 24.11.2017 (United India Insurance Co., Vs. Sunil Kumar & Anr). Therefore, the Tribunal erred in fastening negligence on the claimant herein. Accordingly, the award dated 15.12.2015 made in M.C.O.P.No.1071 of 2013 on the file of the IV Additional Sub Judge, Madurai is modified.



3.The second respondent insurance company is directed to deposit the entire compensation of Rs.2,11,509/- with interest @ 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, by filing proper application before the Tribunal, less the amount already withdrawn by him, if any.

4.This appeal is partly allowed accordingly. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The IV Additional Sub Judge,
Motor Accident Claims Tribunal, Madurai.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.J.S.Murali, Advocate SR.No. 92616

+1cc to M/S.A.Theethar, Advocate SR.No. 92768

C.M.A. (MD) No.1447 of 2016
13.12.2017

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VB/SKN RSK/SAR 2/25.06.2018/2P/6C