



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

and

WEB COPY THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.M.A (MD) No. 604 of 2014

and

M.P (MD) No. 1 of 2014

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office,
Jeevajothi Building,
Salai Road,
Dindigul-624 001.

: Appellant/2nd respondent

Vs.

1. Deivendran

: 1st Respondent/Petitioner

2. N. Ramasamy

: 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, against the Judgment and Decree, dated 12.08.2013 passed in MCOP No.5 of 2010 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Theni and set aside the same.

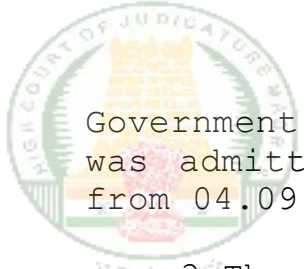
For Appellant	: Mr. I. Robert Chandrakumar
For 1 st Respondent	: Mr. G. Vanjinathan
For 2 nd Respondent	: No appearance

JUDGMENT

[Judgment of this Court was made by **K. KALYANASUNDARAM, J.]**

The appellant Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Theni, in M.C.O.P.No.5 of 2010, dated 12.08.2013, has preferred this appeal, questioning the quantum awarded by the tribunal.

2. MCOP No.5 of 2010 has been filed by the injured claiming compensation of Rs.10,00,000/- alleging that on 03.09.2009 at about 6.30 hours, while he was riding his TVS Victor bearing registration No.TN-60-B-5378, the driver of the lorry belonging to the second respondent bearing registration No.TN 57-W-9592 drove the vehicle in a rash and negligent manner and dashed against the two wheeler. In the impact, the first respondent/claimant sustained grievous injuries. Immediately, he was taken to the



Government Medical College Hospital, Theni and subsequently, he was admitted in the Madurai Appollo Hospital and took treatment from 04.09.2009 to 21.09.2009 as inpatient.

3.The appellant filed a counter contending that the claimant was cause of the accident, and also disputed their liability to pay compensation.

4.Before the Tribunal, the claimant examined himself as P.W.1 and also examined two other witnesses as P.W.2 and P.W.3 and marked Exs.P1 to P14. On the side of the respondents, no witness was examined and no document was marked.

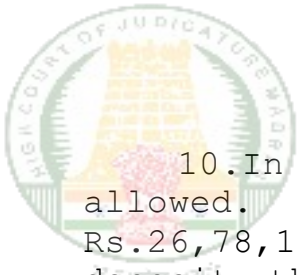
5.The Tribunal relying upon the evidence of P.W.1, Ex.P1-FIR, Ex.P3-Report of the Motor Vehicle Inspector and Ex.P5-Charge sheet, came to the conclusion that the driver of the lorry was responsible for the accident and awarded compensation of Rs.26,78,120/- along with interest @ 7.5% per annum. Challenging the award, the present appeal has been filed.

6.Heard **Mr.I.Robert Chandrakumar**, learned counsel appearing for the appellant and **Mr.G.Vanjinathan**, learned counsel appearing for the first respondent and perused the materials available on record.

7.The learned counsel for the appellant submitted that the tribunal has awarded Rs.50,000/- twice under the head of Attendant charges and the award of Rs.2,00,000/- for pain and suffering is on the higher side. On the other hand, the learned counsel for the claimant made submissions in support of the award passed by the tribunal.

8.As regards the quantum, PW3 Dr.Vijayakumar has deposed that on 03.07.2013, in order to assess the disability of the claimant, he examined him and also verified the case records, including x-rays and found that the claimant suffered crush injuries on the left leg and there was an amputation of left leg below hip. After seeing Ex.P2 wound certificate and Ex.P9, discharge summary certificate issued by the Apollo Hospital, gave Ex.P14 disability certificate stating that he suffered 85% permanent disability.

9.The Tribunal has fixed the notional loss of income at Rs.15,473/- per month and by applying multiplier of 13, awarded Rs.**20,51,720/-** towards loss of income. The tribunal awarded twice Rs.50,000/- towards attendant charges, hence, **Rs.50,000/-** is to be reduced. The award of Rs.2,00,000/- towards pain and suffering is on the higher side and the same is reduced to **Rs.1,00,000/-** and the Medical expenses comes to Rs.1,48,280/-, but the tribunal awarded Rs.1,70,400/-, hence, it is reduced to **Rs.1,48,280/-**. The amounts awarded under all other heads are confirmed.



10. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.25,00,000/-** from Rs.26,78,120/-. The appellant Insurance Company is directed to deposit the modified amount, less already deposited, within a period of eight weeks from the date of receipt of the judgment copy. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal
Theni.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.82012

+1cc to Mr.G.Vanjinathan, Advocate Sr.No.81876

AM

VB/KP/SAR1/12/12/2017/3P/4C

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