

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.383 of 2006
and C.M.P.No.1221 of 2006

United India Insurance Company Limited,
Coimbatore. Appellant/2nd Respondent

...vs...

1.Maripandian 1st Respondent/Claimant

2.Ramachandran 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 18.01.2005 in M.C.O.P.No.1015 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court - 5, Coimbatore at Thirupur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.S.S.Swaminathan for R1

R2- Not claimed

JUDGMENT

Aggrieved over the orders passed by the Tribunal, the United India Insurance Company Limited, Coimbatore has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The first respondent/claimant filed a claim petition in M.C.O.P.No.1015 of 2002 under Section 166 of the Motor Vehicles Act, 1988, before the Motor Accidents Claims Tribunal, Thirupur, seeking a compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 05.01.2002.

3. The brief case of the appellant/claimant is as follows:
On 05.01.2002, the first respondent/claimant was waiting at

Annur Bus Stand to board a bus. At about 19.30 hours, a Motorcycle bearing Registration No. TN 39 S 5339 belonging to the second respondent herein hit the first respondent/claimant, as a result of which, he sustained grievous injuries.

4. According to the first respondent/claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration No. TN 39 S 5339, was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

5. The owner of the two wheeler bearing Registration No. TN 39 S 5339, the second respondent herein did not appear before the Tribunal and therefore, he was set ex-parte. The present appellant United India Insurance Company Limited, Coimbatore, filed a counter and contested the claim petition. The Tribunal after analysing the evidence on record, held that the first respondent/claimant sustained grievous injury on account of the road accident that took place on 05.01.2002 and that the second respondent as well as the the present appellant are jointly and severally liable to pay a compensation of Rs.4,57,029/- together with interest at the rate at 9% per annum from the date of claim petition till the date of deposit to the first respondent/claimant.

6. Mr. Arun Kumar, learned counsel appearing for the appellant would contend that though the first respondent/claimant had contended that the accident took place on 05.01.2002, the FIR was lodged only on 06.05.2002 i.e., after delay of 121 days. Since the first respondent/claimant did not explain the delay in lodging the FIR with the police, the Tribunal should not have directed the present appellant to pay compensation for the accident that allegedly took place on 05.01.2002.

7. The learned Additional District Judge, Fast Tract Court-5, Coimbatore at Thirupur after analysing the oral evidence adduced on the side of the first respondent/claimant has held that the first respondent/claimant sustained injuries in the accident that took place on 05.01.2002. A perusal of the Wound Certificate (Ex.P2) and the discharge summary (Ex.P3) clearly shows that the first respondent/claimant was admitted in the hospital at 2.30 am on 06.01.2002 and an operation was also performed on 07.01.2002. Subsequently, he was discharged on 11.01.2002. In the case history, it is clearly indicated by the hospital authorities that the first respondent/claimant got injured in the road accident that took place on 05.01.2002 near Santhosh Bakkery at Annur Bus Stand. Infact, the Registration No of the offending vehicle was also clearly indicated in both Ex.P2 and Ex.P3. Merely because the FIR has been lodged after a

period of four months, the entire claim petition cannot be thrown out in the absence of contra evidence.

8.As far as the quantum of compensation is concerned, the Tribunal has fixed the income of the injured as Rs.5,000/- per month based on the certificate issued by one A.Shankar (PW3).

9.Mr.S.S.Swaminathan, learned counsel appearing for the first respondent would contend that the first respondent/claimant was a Diploma Holder in Civil Engineering and was earning a sum of Rs.5,000/- per month as evidenced by the certificate (Ex.P8) issued by one A.Shankar (PW3).

10.Per contra, Mr.Kaithamalai Kumaran, learned counsel appearing for the appellant would contend that except for the Salary Certificate (Ex.P8), no documentary evidence was adduced on the side of the first respondent/claimant to show that he was actually earning a sum of Rs.5,000/- per month. It is true that the first respondent/claimant did not adduce any acceptable evidence to show that he was actually receiving a sum of Rs.5,000/- per month from his employer. Therefore, the notional income of the first respondent/claimant is fixed as Rs.3,000/- per month. In the instant case the first respondent/claimant had sustained "Bimalleolar fracture of ankle with dislocation" and operation was also performed on 07.01.2002.

11.A perusal of the records shows that the first respondent/claimant was a Diploma Holder in Civil Engineering and the nature of his job requires him to stand at the construction site for long hours. Since he sustained fracture on the ankle, there is a functional disability. Therefore, multiplier method has to be adopted as per the decision of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Since the age of the first respondent/claimant on the date of the accident was 33 years, the proper multiplier to be adopted in the present case is 16 as laid down in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

12.Dr.Gnanaprakash had assessed the partial permanent disability as 38% and the tribunal has also fixed partial permanent disability as 38% and the observations made by the tribunal, in this regard are unassailable. Therefore, a sum of Rs.2,18,880/- ($3000 \times 12 \times 16 \times 38/100$) is awarded towards the partial permanent disability to the first respondent/claimant. The tribunal has awarded only a sum of Rs.5,000/- towards pain and sufferings and a sum of Rs.2,000/- towards extra nourishment. Since these amounts appear to be very meagre, a

sum of Rs.10,000/- and Rs.5000/- are awarded towards pain and sufferings and extra nourishment respectively, considering the nature of injuries sustained by the first respondent/claimant.

13.The tribunal has awarded a sum of Rs.3,87,600/- for loss of earning capacity and again awarded a sum of Rs.38,000/- for the partial permanent disability and the tribunal cannot award amounts separately under the heads partial permanent disability and loss of earning capacity especially, when the first respondent/claimant was not totally disabled from doing his work. The tribunal has not awarded any amount towards transportation and attender's charges and therefore a sum of Rs.3000/- and Rs.2000/- are awarded towards transportation and attender's charges respectively. Thus, the total compensation to be awarded for the first respondent/claimant is extracted here under:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.2,18,880/-
2.	Transportation	Rs.3,000/-
3.	Extra nourishment	Rs.5,000/-
4.	Attender's Charges	Rs.2,000/-
5.	Medical expenses	Rs.24,429/-
6.	Pain and sufferings	Rs.10,000/-
Total		Rs.2,63,309/-

The tribunal has awarded a sum of Rs.4,57,029/- together with interest at the rate of 9% per annum to the first respondent/claimant. This amount is definitely on the higher side and therefore, the award is reduced to Rs.2,63,309/- from 4,57,029/-. The award amount of Rs.2,63,309/- shall carry interest at the rate of 7.5% from the date of claim petition till the date of deposit. The appellant is directed to deposit the compensation amount together with interest at the rate of 7.5% per annum (less the amount already deposited) within a period of four weeks from the date of receipt of copy of this order to the credit of M.C.O.P.No.730 of 2001 and on such deposit being made, the first respondent/claimant is at liberty to withdraw the same after following due procedure of law.

14. With these observations, the Civil Miscellaneous Appeal

is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vkrr/rna

To

The Additional District Judge,
Fast Track Court -5,
Coimbatore at Thirupur.

+1 cc to Mr.S.Arunkumar, Advocate Sr.No.87020

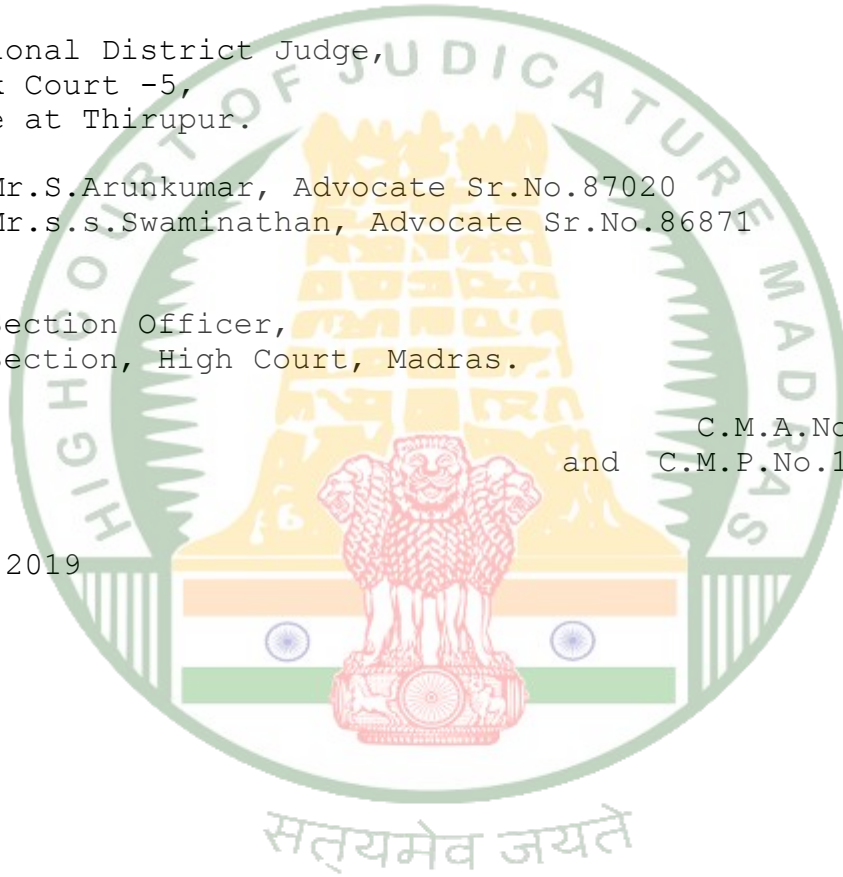
+1 cc to Mr.s.s.Swaminathan, Advocate Sr.No.86871

Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

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and C.M.P.No.1221 of 2006

SV(CO)
CSL/13.03.2019



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