

IN THE HIGH COURT OF JUDICATURE AT MADRAS
CORAM:

DATED: 28.09.2018

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1476 of 2016

The Manager,

The New India Assurance Co Ltd.,

Branch office,

No.78, Dhanvanthiri Building,

East Car Street,

Chidambaram.

... Appellant/2nd Respondent

-vs-

1. Santhoshkumar

2. Subbaiyan

... Respondents/Petitioner/
1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2016 made in MCOP No.27 of 2015 on the file of the Motor Accident Claims Tribunal - IIInd Additional District and Sessions Judge, Chidambaram.

For Appellant : Mr.D.Nadhamuni

For Respondents-1: Mr.T.Gobinath

J U D G M E N T
सत्यमेव जयते

The Judgment was delivered by the Honourable
Mr.Justice R.Subramanian

The Insurance company which suffered an award for payment of a sum of Rs.42,68,333/- for the injuries by one Santhoshkumar in a road accident that occurred on 03.11.2013 is the appellant.

2. According to the claimant on 03.11.2013 at about 12 Noon, he was proceeding from North to South on Vazhuthavur Main road in a Motor cycle bearing registration No.TN-31-BY-9725 with one Anantha Natarajan as pillion rider. The car belonging to the 1st respondent and insured with the 2nd respondent Insurance

company coming in the opposite direction driven by its driver in a rash and negligent manner dashed against the Motor cycle. As a result of the accident, the claimants suffered injuries in the face and fractures on his left leg. The crush injuries in the left leg led to amputation of the left leg below the knee. As a result of the injuries, the claimant had suffered loss of earning power and he lost job as set of System Administrator in Canara Bank Data Center, Bangalore. Claiming that he was earning a sum of Rs.50,000/- per month. The claimant sought for a compensation of Rs.50,00,000/- including cost of artificial limb.

3. The Claim petition was resisted by the Insurance company contending that the accident occurred only due to the rash and negligent driving of the two wheeler. The nature and the effect of the injury was also denied by the Insurance company. The Insurance company also denied the particulars of income as well as the percentage of disability said to have been caused by the injured.

4. The Tribunal, which heard the original petition concluded that the accident had occurred due to the negligence of the driver of the car. The registration of the First Information Report against the driver of the car and the evidence of PW1 coupled with the fact that the Insurance company failed to examine the driver of the car, led the Tribunal come to the conclusion that the accident occurred due to the rash and negligent driving of the car.

5. On the quantum of compensation, the Tribunal awarded a sum of Rs.33,60,000/- towards loss of future earnings having arrived at the quantum of disability at 70%, and the Tribunal, however, arrived at the functional disability at 50%. Having fixed the monthly income of the claimant at Rs.40,000/-, the Tribunal arrived at the loss of earning capacity at Rs.20,000/- and applying a multiplier of 14, the Tribunal arrived at the loss of future earning capacity at Rs.33,60,000/-. The Tribunal awarded a sum of Rs.1,17,333/- towards loss of income, Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities, Rs.50,000/- loss of towards loss of marriage prospects, Rs.3,17,050/- towards medical expenses, Rs.2,20,000/- towards future medical expenses, Rs.10,000/- towards extra-nourishment, Rs.18,000/- towards attender charges and Rs.25,950/- towards ambulance charges. In all, the Tribunal awarded a sum of Rs.42,68,333/- as compensation. It is this quantum of compensation which is challenged by the Insurance company as excessive.

6. We have heard Mr.D.Nadhamuni learned counsel appearing for the Insurance company and Mr.T.Gobinath learned counsel appearing for 1st respondent claimant. The 2nd respondent who is the owner of the car had remained ex-parte before the Tribunal and hence notice to him in this appeal, is dispensed.

7. Mr.D.Nadhamuni learned counsel appearing for the Insurance company would contend that the Tribunal was not right in adopting the multiplier method for assessing the future earning capacity, inasmuch as there is no evidence to show that the claimant/respondent has been relieved of his employment.

8. Per contra, Mr.T.Gobinath learned counsel appearing for the respondent would contend that the result of the injury is amputation of left leg below the knee and the percentage of disability taken by the Tribunal for the purpose of determining the loss of earning power is only 50% and therefore there is no ground to interfere with the assessment of the compensation.

9. We have considered the rival submissions, the fact that the claimant had suffered an amputation is not in dispute. It is certain that the amputation will definitely lead to loss of earning power to a certain extent, depending upon the amputation. Even assuming that the injured claimant has not been discharged or relieved of his present employment, the fact that he suffers an amputation would definitely affect his future prospects in the event of seeking another job with a different employer.

10. We are therefore of the considered opinion that the contention of the Insurance company that in the absence of any evidence to show that the injured claimant has been relieved of his present employment, the Tribunal has no jurisdiction to award any amount towards loss of earning power cannot be accepted. Despite, the fact that the medical professional has certified the permanent disability to the tune of 70%, the Tribunal has taken the loss of earning capacity at 50%. We do not see any reason to interfere with the said conclusion of the Tribunal. The income and age of the injured claimant have been established by valid documentary evidence, and in such circumstances, we do not find any ground to interfere with the award of the Tribunal. Hence, the appeal is dismissed affirming the award of Tribunal. We find that the pursuant to the interim order of this court. The Insurance company has deposited 50% of the award amount with interest at 7.5% per annum.

11. The Insurance company is directed to deposit the balance amount with accrued interest as per the award of the Tribunal within a period of six weeks from the date of order of the copy of the judgment. On such deposit, the claimant is entitled to withdraw the entire amount. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

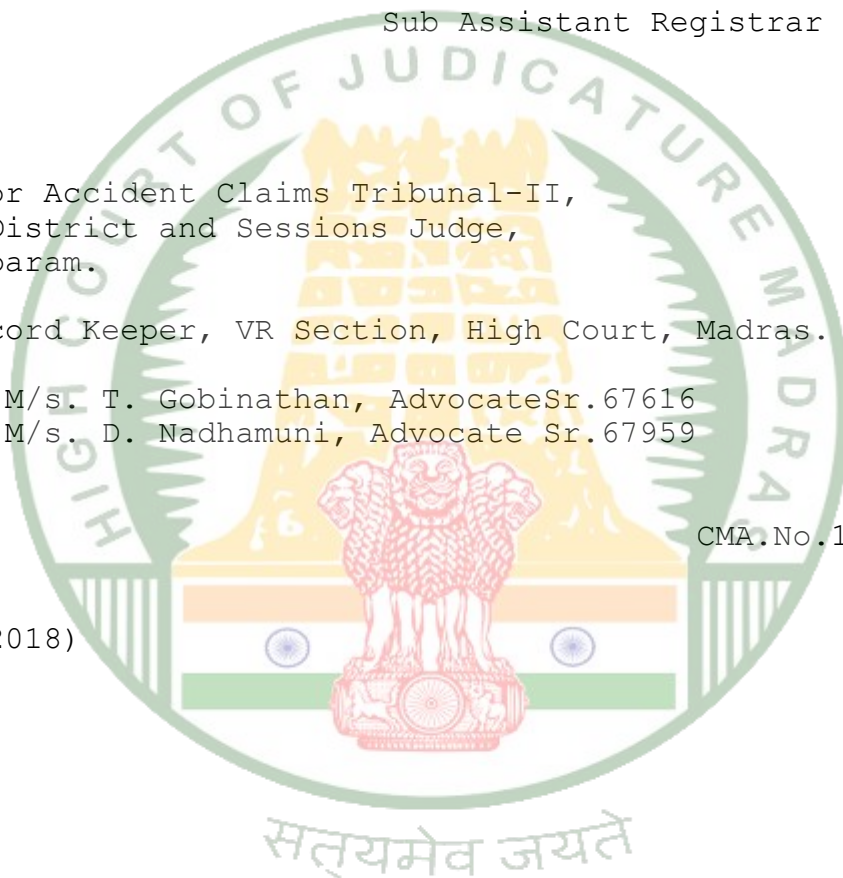
Sub Assistant Registrar

kkn
To,

1. The Motor Accident Claims Tribunal-II,
Addl. District and Sessions Judge,
Chidambaram.
 2. The Record Keeper, VR Section, High Court, Madras.
- + 1 cc to M/s. T. Gobinathan, Advocate Sr. 67616
+ 1 cc to M/s. D. Nadhamuni, Advocate Sr. 67959

CMA.No.1476 of 2016

RGN(CO)
EU(20/11/2018)



WEB COPY