

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No. 1883 of 2008

The New India Assurance Company
Ltd.,
Divisional Office,
Cuddalore -1.

...Appellant/ Respondent 2

Vs

1. Samidurai ... Respondent 1/ petitioner
2. Abdul Kalam Azad ... Respondent 2/ Respondent 1
(R2 remained exparte before Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award made in MACTOP.No.92 of 2007 dated 11.2.2008 on the file of the Motor Accident Claims Tribunal, (Fast Track Court-III), Virudhachalam.

For Appellant : Mr.S. Jayasankar
For Respondents : R1& R2-No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the quantum of compensation awarded to the 1st respondent under the Award passed by the tribunal dated 11.2.2008 passed by the Motor Accident Claims Tribunal (Fast Track Court-III), Virudhachalam in MCOP.No.92 of 2007.

2. The brief facts leading to the filing of the instant appeal are as follows;

- (i) The 1st respondent sustained injuries, as a result of an accident caused by a Tata Sumo car bearing Registration No.TN 31/J 4657 insured with the appellant. The 1st respondent preferred a Motor accident Claim before the Motor Accidents Claims Tribunal in MCOP.No.92 of 2007 seeking a compensation of Rs.4,00,000/- from the appellant.
- (ii) The Motor accident Claims Tribunal, by its award dated 11.2.2008 in MCOP.No.92 of 2007 directed the appellant to pay the 1st respondent a sum of Rs.2,18,684/- together with interest at 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the insurance Company.

4. Heard Mr. S. Jayasankar, learned counsel for the appellant. Despite service of notice on the respondents and their names having been printed in the cause list today, none appears on the side of the respondents.

5. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that the tribunal has erroneously awarded a higher compensation of Rs.2,10,600/- towards a disability of 30% by applying the multiplier method.

6. According to learned counsel for the appellant, the tribunal has arbitrarily applied the multiplier method in calculating the compensation when the disability assessed by the Doctor was not in accordance with the schedule of the Workmen's Compensation Act.

7. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the learned counsel for the appellant observes the following;

a. the 1st respondent has sustained a fracture in the head and he had to be hospitalised for a period of time.

b. It is an undisputed fact that the 1st respondent sustained 30% permanent disability as a result of the accident caused by the vehicle insured with the appellant. No contra evidence has been produced by the appellant before the tribunal to disprove the nature of injuries sustained by the 1st respondent.

8. The tribunal has assessed the notional income of the 1st respondent at Rs.150/- per day even though the 1st respondent who was a Mason claimed that he was earning Rs.6000/- per month in his claim petition. The accident happened in the year 2008 and therefore this Court is of the considered view that the assessment of the monthly income of the 1st respondent is a correct assessment. This Court does not find any infirmity in the tribunal applying the multiplier method considering the nature of injuries sustained by the 1st respondent and the nature of his employment at the time of accident.

9. In the result, there is no merit in the appeal. Accordingly, the appeal is dismissed. No costs.

10. It is represented that the entire award amount has already been deposited before the tribunal. The 1st respondent is permitted to withdraw the compensation awarded by the tribunal along with accrued interest lying to the

credit of MCOP.No.92 of 2007 on filing an appropriate application. Consequently, connected M.P.No. 1 of 2009 is closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

msr

To

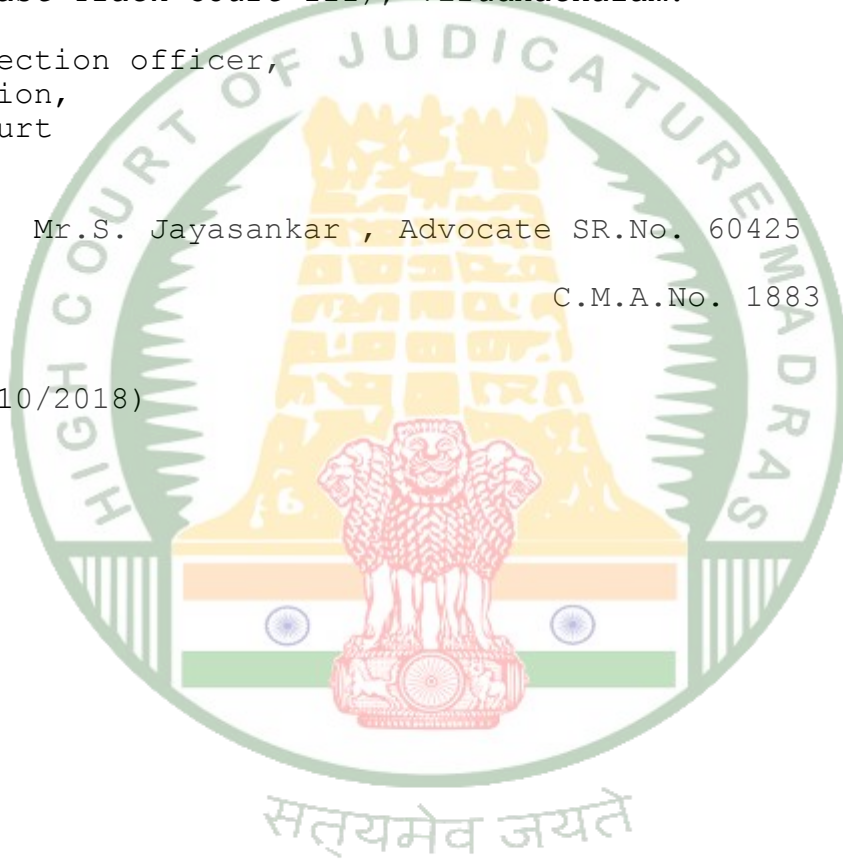
1. The Motor Accident Claims Tribunal,
(Fast Track Court-III), Virudhachalam.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.S. Jayasankar , Advocate SR.No. 60425

C.M.A.No. 1883 of 2008

ASK(31/10/2018)



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