

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2017

DELIVERED ON : 27.06.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1979 of 2007

and

CMP.No.2681 of 2007

The Branch Manager

United India Insurance Co. Ltd.,

Tindivanam

... Appellant/2nd Respondent

Versus

1.Sivakalai

S/o.Kannu Gounder

... 1st Respondent/Petitioner

2.Ramachandran

... 2nd Respondent/1st Respondent

PRYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.1446 of 2001, dated 03.03.2003 on the file of the Motor Accidents Claims Tribunal, Prl.Subordinate Court, Tindivanam.

For Appellant : Mr.M.B.Gopalan

For R1 : Mr.V.Ragavachari

JUDGMENT

The appellant herein is the United India Insurance Company, who is the second respondent before the Tribunal, filed the present petition, against the judgment and decree passed in M.C.O.P.No.1446 of 2001 dated 03.03.2003.

2. The brief facts of the claimant is that when the claimant was proceeding towards Gingee bus stand as pedestrian, a private bus bearing Registration No.TN 23B-3335 hit the claimant near Pandian Fertilizer Shop. The claimant sustained grievous injury, due to rash and negligent driving of the driver and immediately, he was taken to the Government Hospital, Tindivanam and then referred to JIPMER Hospital, Pondicherry for further treatment. The claimant was a hale and healthy person

and he was doing agricultural work and milk vending business and earning Rs.3,500/- per month. The claimant has claimed the compensation for a sum of Rs.8,00,000/- against the first respondent being the owner of the vehicle and the second respondent, who is an insurer of the first respondent vehicle.

3. The Tribunal, based on the evidence and the documents placed before it, decided the liability on the first respondent - driver. The Tribunal considered the evidence and the records of the age of the injured person who has lost his right leg and also the period of treatment and the medical expenses incurred by him at Stanely Hospital, Chennai and also the expenses incurred for the assistance of the injured person. Ex.P6 is the Disability Certificate. The Doctor assessed the permanent disability at 60%. The Tribunal has awarded a sum of Rs.6,35,000/- as compensation under the following heads.

S.No.	Heads	Award Amount
1	Loss of Income during treatment	Rs.50,000.00
2	Transportation Charges	Rs.5,000.00
3	Extra Nourishments	Rs.20,000.00
4	Medical and other Expenses	Rs.10,000.00
5	Pain and Sufferings	Rs.2,00,000.00
6	Permanent Disability	Rs.3,00,000.00
7	Future Prospects	Rs.50,000.00
	Total	Rs.6,35,000.00

4. The total sum of Rs.6,35,000/- which was determined is without any acceptable and documentary evidence and the compensation awarded by the Tribunal is not sustainable and liable to be interfered.

5. The amount awarded under the head "Pain and Suffering" as Rs.2,00,000/- and a sum of Rs.3,00,000/- under the head "Permanent Disability", are highly excessive. The amount awarded by the Tribunal towards "Loss of Income", is not based on credible evidence and it is highly speculative. Further, the income of the injured was also speculative. The Tribunal has awarded a sum of Rs.20,000/- for extra nourishment.

6. On a perusal of the records, it is seen that the respondent/ claimant has filed the claim petition for the injuries sustained by him, due to an accident made by the first respondent / driver of the bus. Ex.P2 Accident Register perused.

The records reveals that the claimant sustained injury under the right knee, left shoulder and the right side hip and he was admitted in the Government Hospital, Tindivanam and JIPMER Hospital, Pondicherry and he was under treatment from 29.01.2002 to 24.03.2002, nearly 2 1/2 months and for the fracture sustained by him, he was given treatment and below his knee, leg was amputated by surgery and further treatment was given at Chennai K.K.Nagar Private Hospital and for his assistance, a person was also appointed and the incurred expenses were also perused. The Certificates issued by the Tindivanam Government Hospital and the Stanley Medical College and further claimants side evidence, i.e. the Doctor, who examined the injured, for assessing disability and also found that his leg was amputated below the knee and the Doctor-P.W.6 assessed his disability at 60% and issued a Disability Certificate - Ex.P6.

7. Hence, the above evidences and documents reveal that the injured person has lost his leg and one can imagine the pain and sufferings he underwent, due to the injuries and also during the time of treatment, which are of a quite considerable one and which cannot be measured and compensated by means of compensation. It can also very well assessed that definitely the claimant cannot do his occupation and severe income loss would be caused, due to the accident and the injuries. It is also verified that the occupation of the claimant was agriculturist and also doing milk vending business and he was earning Rs.3,500/- per month.

8. While assessing the loss of income during the period of treatment, the Tribunal has awarded a sum of Rs.50,000/-, is quite reasonable and also the sum of Rs.10,000/- awarded by the Tribunal towards "medical expenses", is also not on the higher side. The sum of Rs.20,000/- awarded by the Tribunal under the head "Nourishment" is also not on the higher side. The Tribunal, while considering the age of the injured as 50, who is an agriculturist and earning Rs.3,500/- p.m by doing milk business, his loss of income for the future has been assessed as Rs.50,000/- is quite reasonable. The person at the age of 50, who was earning Rs.3,500/- p.m, now lost his leg and he is unable to attend his occupation in an efficient manner, his future income as Rs.50,000/- is also appropriate. The Tribunal assessed the permanent disability at 60% as per Ex.P6-Disability Certificate and fixed at Rs.3,00,000/-, is also a reasonable one.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance company is directed to deposit the entire award amount along with interest, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal is directed to transfer the

award amount directly to the Bank account of the claimant through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mk

To

1.The Motor Accidents Claims Tribunal,
Prl.Subordinate Court,
Tindivanam.

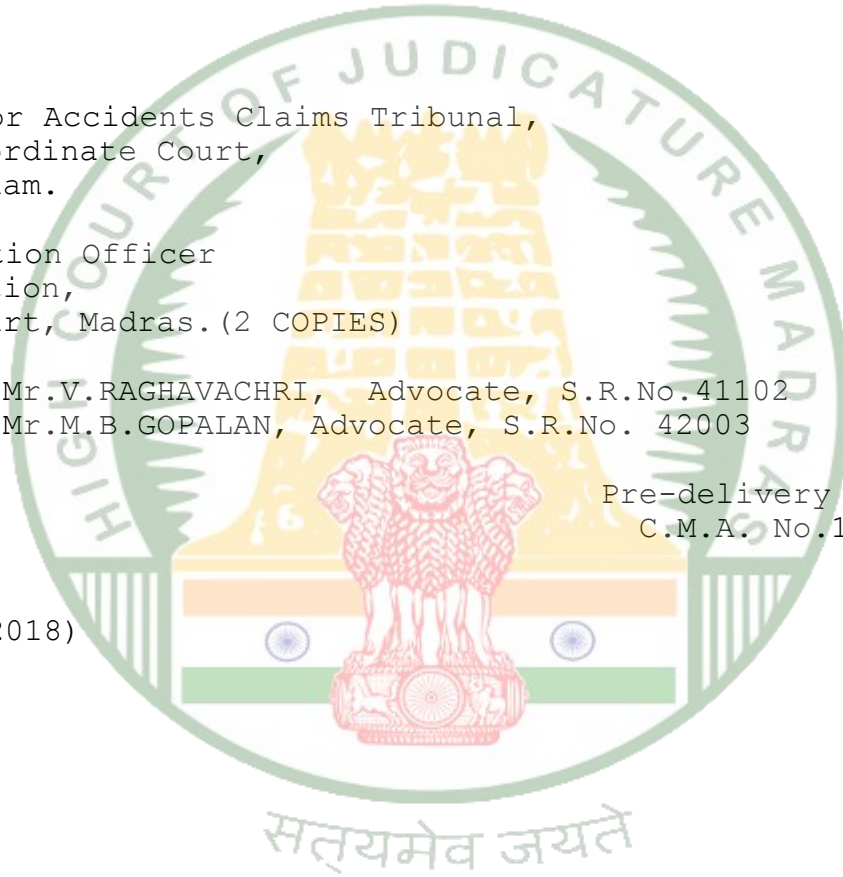
2.The Section Officer
V.R.Section,
High Court, Madras. (2 COPIES)

+1cc to Mr.V.RAGHAVACHRI, Advocate, S.R.No.41102

+1cc to Mr.M.B.GOPALAN, Advocate, S.R.No. 42003

Pre-delivery Judgment in
C.M.A. No.1979 of 2007

SSV(CO)
TR(01/08/2018)



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