

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.634 of 2013

The New India Assurance Company Ltd
No.149, Bharathiyar Road
Karaikal

..Appellant/3rd Respondent in Trial
Court

vs

1.A.Selvaraj
2.A.Kumerasan

3.M/s.Kamaraj Transport Firm
No.21, Pragara Street
Karaikal, Pondicherry 609 602
(R3 is set exparte in MCOP.205/2009
and hence given up)

..Respondents/petitioner,
respondents 1 & 2 in trial court.

Civil Miscellaneous Appeal filed against the judgment and
decree dated 16.07.2012 made in M.C.O.P.No.205 of 2009 on the
file of Motor Accident Claims Tribunal, Sub Court, Chidambaram.

For appellant : : Mr.R.Neethi Perumal

For Respondents

for R1 : : Mr.S.Kumaradevan

for R3 : : given up

J U D G M E N T

The Insurance Company/3rd respondent before the Tribunal has
filed this appeal against the judgment and decree dated
16.07.2012 made in M.C.O.P.No.205 of 2009 on the file of Motor
Accident Claims Tribunal, Sub Court, Chidambaram.

2. For convenience sake, the parties are referred to
hereunder according to their litigative status before the
Tribunal. It is a case of injury. On 06.01.2009 at about 6.55
p.m., when the petitioner was walking along Chidambaram to
Sirkazhi Road, a Bus owned by Kamaraj Transport bearing
Reg.No.BY-02-D-3535 coming in the same direction, without making
any horn sound, came in a rash and negligent manner and dashed
against the petitioner. In the resultant accident, the

petitioner fell down and sustained grievous injuries and filed claim petition before the Tribunal seeking compensation of Rs.12,00,000/-.

3. On the other hand, the 3rd respondent/Insurance Company filed counter and denied the averments made in claim petition. It is also stated that the accident did not take place as alleged in the petition and the victim sustained only simple injuries. Thus, the 3rd respondent sought to dismiss the petition.

4. In support of the claim, the claimant examined P.W.1 and P.W.2 and Exhibits P.1 to P.19 were marked and also marked M.O.1 and M.O.2, X-ray. On behalf of the Insurance Company, neither any witness was examined nor any document was marked. The Tribunal, after taking note of the evidence available before it, held that the 1st respondent is responsible for the accident. It is also held that the petitioner/victim suffered fracture solely due to the said accident and further held that the 3rd respondent has to pay the compensation.

5. As far as quantum of compensation arrived at by the Tribunal, it is seen that the Tribunal has taken the age of the injured petitioner as 41 and as he was doing cooly work, his monthly income has been arrived at Rs.10,500/- (Rs.350/- x 30 = 10,500). Further, considering the evidence of P.W.2 doctor assessing the disability of the petitioner at 75%, and after analysing various aspects including Ex.P.9-Discharge summary, the Tribunal has taken the disability at 50% and calculated the loss of income due to permanent disability as under:-
 $10,500/- \times 12 \times 15 \times 50\% = \text{Rs.}9,45,000/-$.
The Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
1	Loss of income during the period of treatment	Rs. 10,500/-
2	Transport expenses	Rs. 5,000/-
3	Extra nourishment	Rs. 25,000/-
4	Medical expenses	Rs. 20,000
5	Attender charges	Rs. 10,000/-
6	Permanent disability	Rs. 9,45,000/-
	Total	Rs.10,10,500/- given as Rs.10,15,500/-

6. Aggrieved by the said quantum of compensation arrived at by the Tribunal, the Insurance company has filed the present appeal. The learned counsel for the appellant/Insurance Company submits that due to negligence of the victim who was walking in the middle of the road, the accident occurred. It is further contended that the Tribunal took into account that the claimant has employment for all the 30 days in the month and arrived at Rs.10,500/- per month and failed to note that there is atleast 4 sundays in a month will be holiday for the construction work. It is also stated that trial court has granted compensation in an exorbitant manner and sought to reduce the same. Thus the appellant seeks to entertain the appeal and sought to refix the compensation.

7. On the other hand, the learned counsel for the petitioner/1st respondent/claimant submitted that the award passed by the Claims Tribunal is just and proper and needs no interference.

8. The Tribunal by taking into consideration all the materials available before it, particularly the fact that the injured petitioner sustained 75% disability in the accident, due to which his earning capacity would have been shattered, awarded compensation of Rs.10,15,500/-. This court is of the view that the compensation awarded is just and proper there is no scope for reduction. Accordingly, the appeal is dismissed as devoid of merit. No costs. Connected MP is closed. The appellant/Insurance Company, is directed to deposit the award amount as awarded by the Tribunal, less the amount, if any, already deposited, along with proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the injured claimant is permitted to withdraw the award amount with accrued interest, less the amount, if any already withdrawn by him, by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-

Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Sub Court, Motor Accidents Claims Tribunal,
Chidambaram.

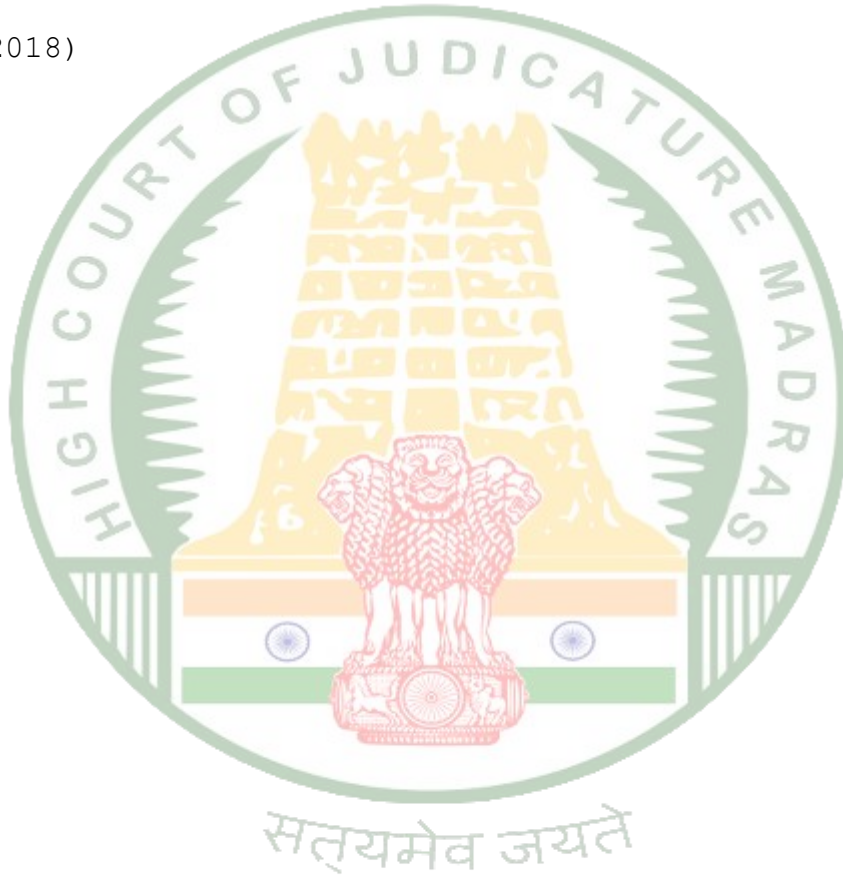
2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.R.NEETHIPERUMAL, Advocate, S.R.No. 5146

+1cc to Mr.S.KUMARDEVAN, Advocate, S.R.No. 4958

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