

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.02.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.3591 of 2012

and

M.P.No.1 of 2012 & M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Branch Manager, Tindivanam. Appellant/2nd respondent

Vs.

1.M.Lingan ...Ist Respondent/Petitioner

2.Venkatachalam ...2nd Respondent/Ist Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 24.09.2007 in M.C.O.P.No.106 of 2004 passed by the Motor Accident Claims Tribunal (Fast Tract Cour-I), Tindivanam.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.P.Mani (For R1)

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

This appeal has been filed by the Insurance Company challenging the award dated 24.09.2007 in M.C.O.P.No.106 of 2004 passed by the Motor Accident Claims Tribunal (Fast Tract Cour-I), Tindivanam.

2.The 1st respondent herein is the claimant before the Tribunal. It is the case of the claimant before the Tribunal that on 17.03.1996 he had travelled in a car along with two other persons, from Thirukoilure to Pondicherry and while the said car was nearing Peringiyur, a lorry bearing Reg.No.TN-32-1579 owned by the 2nd respondent herein and insured with the appellant-Insurance Company came from opposite direction in a rash and negligent manner. Since it is a single road, in order to avoid head on collision, the driver of the car suddenly turned the car to the extreme left side of the road and hit on a

tamarind tree, thus, the said car in which the claimant was travelling involved in the accident. In the said accident, the 1st respondent/claimant sustained multiple fracture injuries on the rib bones and other multiple injuries all over the body. It is further case of the claimant that he was carrying on financial and travel business and he was also owning 25 acres of land, two lorries and two buses and that on account of the injuries sustained by him, he is not in a position to carry on his avocation. Thus, he made a claim for a sum of Rs.20 lakhs as compensation.

3.The case of the claimant was resisted by the Insurance Company by filing a detailed counter affidavit denying the case projected by the claimant.

4.Before the Tribunal, in order to prove the case, on the side of the claimant, the claimant examined himself as P.W.1 besides examining three other witnesses as P.W.2 to P.W.4 and marked twenty two documents as Ex.P.1 to Ex.P.22. On the side of the Insurance Company, neither oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was the result of the rash and negligent driving of the driver of the lorry owned by the 1st respondent and insured with the appellant/Insurance Company. With regard to the quantum of compensation, on the basis of the evidence of the Doctor-P.W.4, the Tribunal has fixed the disability suffered by the claimant/victim at 64% and by taking a sum of Rs.20,000/- as monthly income of the claimant, and by applying the multiplier 11, has awarded a sum of Rs.10,98,240/- under the head of loss of income with proportion to 64% disability. That apart, the Tribunal has awarded a sum of Rs.5,00,687/- for medical expenses, a sum of Rs.10,000/- each under the heads of pain & sufferings, extra-nourishment & transportation. Thus, the Tribunal has passed an award for a total compensation amount of Rs.16,28,927/-. Aggrieved over the same, the present appeal has been filed by the appellant/Insurance Company.

6.The learned counsel for the appellant/Insurance Company submitted that before the Tribunal, it is the case of the claimant that at the time of accident, he was travelling in a car, but the registration number of the said car was not mentioned in his claim petition. Further, the claimant has not chosen to produce the Motor Vehicle Report to show that the lorry hit on the right side door of the car. On the other hand, it appears that the accident had occurred due to the own negligence of the driver of the car, who lost the control and hit the car against a tamarind tree. But, the Tribunal without considering these aspects fixed the entire liability on the

Insurance company to pay the compensation amount. Therefore, the finding rendered by the Tribunal that the accident had happened only due to the rash and negligent driving of the driver of the lorry insured with the appellant/Insurance company has to be set aside.

7.It is further submitted by the learned counsel for the appellant/Insurance Company that absolutely no evidence has been produced on the side of the claimant to show that on account of the accident, the claimant/victim was not in a position to carry on his avocation. In the absence of such evidence, the Tribunal ought not to have applied the multiplier method to arrive at the compensation under the head of loss of income. Therefore, the compensation amount of Rs.10,98,240/- awarded by the Tribunal under the head of loss of income needs proper reduction.

8.Per contra, the learned counsel for the 1st respondent/claimant made his submissions supporting the award passed by the Tribunal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

10.It is the case of the claimant that the claimant was travelling in the car along with other two persons from Thirukoilure to Pondichery and while the car was nearing Peringiyur, a lorry bearing Reg.No.TN-32-1579 came from opposite direction in a rash and negligent manner and since it is a single road, in order to avoid head on collision, the driver of the car suddenly turned the car to the extreme left side of the road and hit on a tamarind tree. As contended by the learned counsel for the appellant/Insurance Company, the motor vehicle report was not produced to show that only the driver of the lorry was responsible for the accident. At the same time, it is seen that the Insurance Company has also not chosen to produce any evidence either oral or documentary to show that the driver of the lorry was not responsible for the accident. In the absence of any evidence on the side of the Insurance Company, this Court does not find any infirmity in the findings rendered by the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry.

11.So far as the quantum of compensation is concerned, We find that it is the case of the claimant that on account of the accident, he had sustained multiple fracture on rib bones and the Doctor-P.W.4 had assessed the disability suffered by the claimant at 64%. But, at the same time, no evidence was produced on the side of the claimant to show that on account of the injuries suffered by him, he was not in a position to carry on his avocation. In the absence of such evidence, the multiplier method adopted by the Tribunal in awarding the compensation under the head of loss of income is not correct.

Hence, the sum of Rs.10,98,240/- awarded by the Tribunal for loss of income needs proper modification. Considering the facts and circumstances of the case, We are of the opinion that the claimant is entitled for compensation under the head of loss of disability. The Doctor-P.W.4 has assessed the disability suffered by the claimant/victim at 64%. We are of the opinion that in order to arrive at a just and proper compensation under the head of disability, a sum of Rs.3,000/- could be awarded for each percentage of disability. If so awarded, the total amount comes to Rs.1,92,000/- which is hereby awarded under the head of disability. Consequently, the sum of Rs.10,98,240/- awarded by the Tribunal under the head of loss of income by applying multiplier method is set aside. Further, We find that the Tribunal has awarded only a meagre sum of Rs.10,000/- each for transportation, extra-nourishment and pain & sufferings. Considering the nature of the injuries suffered by the claimant as well as long duration of treatment undergone by him, the sum of Rs.10,000/- each awarded by the Tribunal under the said heads are hereby enhanced to Rs.25,000/- each. Further, We find that the Tribunal has not awarded any amount for loss of amenities. On account of the injuries suffered by the claimant, he would find it difficult to do his day-to-day affairs as he was doing before the accident. Hence, another sum of Rs.50,000/- is hereby awarded for loss of amenities. Since the sum of Rs.5,00,687/- awarded by the Tribunal for medical expenses is supported by the medical bills, the same is hereby confirmed. Consequently, the total compensation amount of Rs.16,28,927/- awarded by the Tribunal is hereby modified and reduced to Rs.8,17,687/- and the same is rounded off to Rs.8,17,700/-. The break up details of the modified/reduced compensation amounts are as follows_

Permanent Disability	= Rs.1,92,000/-
Medical expenses	= Rs.5,00,687/-
Pain and Sufferings	= Rs. 25,000/-
Transportation	= Rs. 25,000/-
Extra-nourishment	= Rs. 25,000/-
Loss of amenities	= Rs. 50,000/-

Total	= Rs.8,17,687/-
Rounded off	to Rs.8,17,700/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.16,28,927/- awarded by the Tribunal is hereby modified and reduced to Rs.8,17,700/-. The appellant/Insurance Company is directed to deposit the total compensation amount of Rs.8,17,700/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the

date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same with accrued interest thereon by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

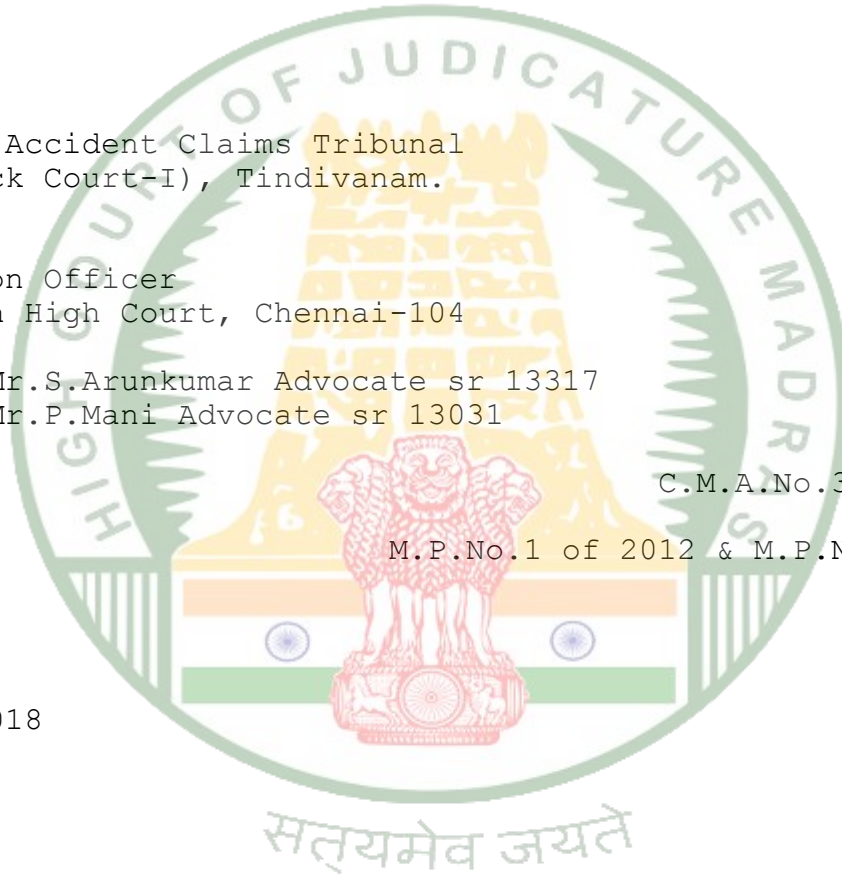
To,
The Motor Accident Claims Tribunal
(Fast Track Court-I), Tindivanam.

copy to
The Section Officer
VR Section High Court, Chennai-104

+1 cc to Mr.S.Arunkumar Advocate sr 13317
+1 cc to Mr.P.Mani Advocate sr 13031

C.M.A.No.3591 of 2012
and
M.P.No.1 of 2012 & M.P.No.1 of 2015

pvs(co)
aa05/06/2018



WEB COPY