

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2617 of 2018  
and C.M.P.No.19739 of 2018

The Branch Manager,  
M/s.United India Insurance Company Ltd.,  
No.50 A, Pallivasal street, Perambalur.

.. Appellant /2<sup>nd</sup> Respondent

Vs.

1.Senthamarai Devi

2.Waheetha Begum

.. Respondents/Petitioner & 1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.03.2018 made in M.C.O.P.No.747 of 2014, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Perambalur.

For Appellant : Mr.D.Bhaskaran  
For R1 : Mr.T.Gopinath

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 15.03.2018 made in M.C.O.P.No.747 of 2014, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Perambalur.

2.The appellant/Insurance Company is second respondent in M.C.O.P.No.747 of 2014 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Perambalur. The first respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.08.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to

the rash and negligent driving by the driver of the vehicle belonging to the second respondent, driver of the vehicle was not having valid driving license at the time of accident and hence directed the appellant, who is insurer of the said vehicle, to pay a sum of Rs.5,53,550.50 as compensation to the first respondent and recover the same from the owner of the vehicle/second respondent.

4. Aggrieved against the said award dated 15.03.2018 made in M.C.O.P.No.747 of 2014, the appellant has come out with the present appeal challenging the quantum of compensation.

5. Though the learned counsel for the appellant has raised grounds on both liability as well as quantum of compensation, at the time of arguments, he contended that he is not challenging the liability and filed the appeal only with regard to quantum of compensation. Mr.T.Gopinath, the learned counsel takes notice for the first respondent and by consent of both the learned counsel appearing for the appellant and first respondent, the appeal is taken up for final disposal at the admission stage itself.

6. The learned counsel appearing for the appellant contended that the Tribunal without properly appreciating the evidence with regard to negligence, has held that due to the negligence on the part of the driver, the accident occurred. The Tribunal in a mechanical manner has awarded compensation by applying multiplier method. The first respondent has not proved that she is totally disabled functionally and she is not able to do her work as she was doing earlier. As per the judgment of the Hon'ble Apex Court, percentage of disability with regard to particular part cannot be taken as disability for entire body. The amounts awarded by the Tribunal under different heads are excessive. Therefore, he prayed for setting aside the award passed by the Tribunal.

7. On the other hand, the learned counsel appearing for the first respondent/claimant contended that the first respondent was aged 30 years at the time of accident and the Medical Board has assessed disability of the first respondent at 40%. The first respondent took treatment as in-patient from 16.08.2014 to 29.08.2014 for 14 days. He further contended that the first respondent was running STD Booth and due to the fracture, she is not able to do her work as she was doing earlier. The Tribunal has rightly applied multiplier method and awarded compensation towards disability. The Tribunal has not awarded any amounts towards pain and suffering, extra nourishment, attendant charges, loss of income, transportation and loss of amenities. Therefore, he prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials on record.

9. From the materials on record, it is seen that the first respondent has suffered fracture on the left leg and underwent surgery. She took treatment as in-patient for 14 days. Before the accident, according to the first respondent, she was running STD Booth. She has not let in any evidence that due to fracture in the left leg, she could not continue the STD Booth. There is nothing on record to show that the appellant has suffered functional disability and she has totally lost her earning capacity. In such circumstances, the Tribunal erred in applying multiplier method instead of granting compensation based on percentage basis. For the above reason, the amount awarded by the Tribunal by applying multiplier method is set aside. As per the disability fixed by the Tribunal, the first respondent is entitled to get compensation at the rate of Rs.3,000/- per percentage for 40% disability. i.e.,  $40\% \times \text{Rs.3,000} = \text{Rs.1,20,000/-}$ .

10. It is seen from the records that the Tribunal has not awarded any amounts towards pain and suffering, extra nourishment, attendant charges, loss of income, transportation and loss of amenities. The first respondent contended that she was running STD Booth and was earning a sum of Rs.15,000/- per month. In the absence of any evidence to prove the income, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the first respondent. The appellant is entitled for compensation towards loss of income during and after the treatment period, i.e.,  $\text{Rs.6,000} \times 3 = \text{Rs.18,000/-}$ . Further, this Court awards a sum of Rs.50,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment, Rs.15,000/- towards attendant charges, Rs.5,000/- towards transportation and Rs.20,000/- towards loss of amenities. The award of the Tribunal with regard to pay and recovery and the amount awarded under the head of medical bills are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S.No | Description          | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|----------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Permanent disability | 4,60,800                        | 1,20,000                          | reduced                                |

|    |                    |             |             |                           |
|----|--------------------|-------------|-------------|---------------------------|
| 2. | Pain and suffering | -           | 50,000      | awarded                   |
| 3. | Extra nourishment  | -           | 10,000      | awarded                   |
| 4. | Attendant charges  | -           | 15,000      | awarded                   |
| 5. | Loss of income     | -           | 18,000      | awarded                   |
| 6. | Transportation     | -           | 5,000       | awarded                   |
| 7. | Medical bills      | 92,750.50   | 92,750.50   | confirmed                 |
|    | Total              | 5,53,550.50 | 3,10,750.50 | Reduced by Rs.2,42,800 /- |

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,53,550.50 is hereby reduced to Rs.3,10,750.50 with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/first respondent is permitted to withdraw the modified award amount with accrued interest, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.747 of 2014 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Perambalur, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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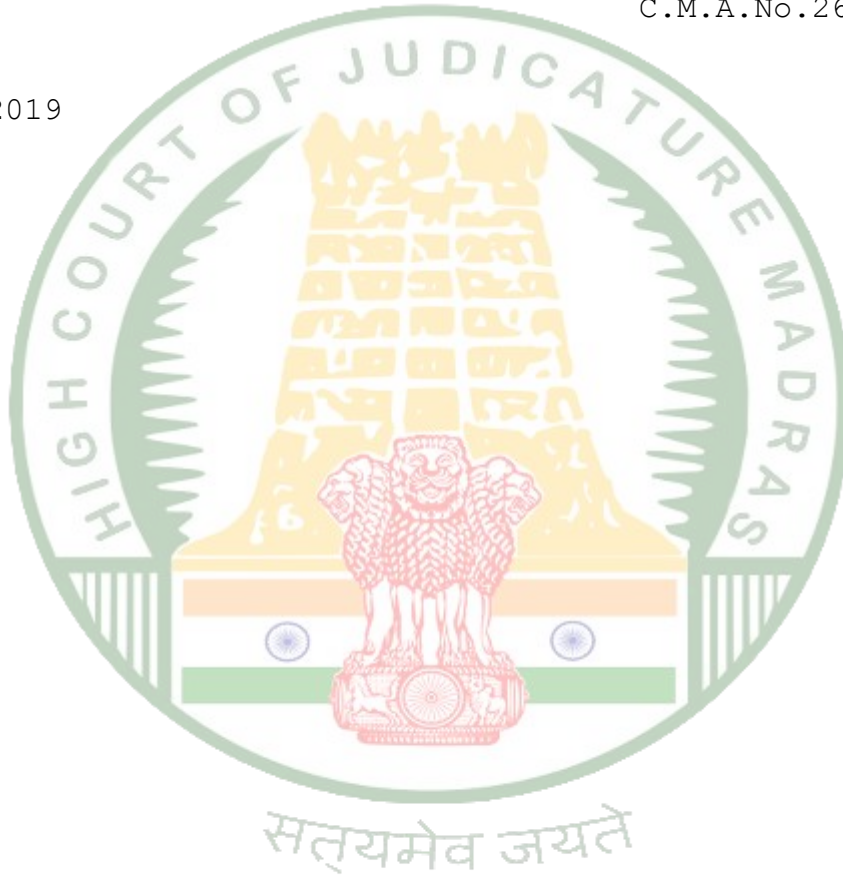
To

The Motor Accident Claims Tribunal  
Chief Judicial Magistrate  
Perambalur.

+1cc to Mr.T.Gobinath, Advocate sr.no.79332  
+1cc to Mr.D.Bhaskaran, Advocate sr.no.78974

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