

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.3037 of 2006
& M.P.No.1 of 2006

Divisional Manager,
M/s. United India Insurance Company Limited,
South India Complex, Mount Road,
Chennai - 2 ... Appellant/ Respondent2

...vs..

1. V.Kalaiselvan ... Respondent1/ Petitioner1
2. K.N.S.Mathar Shah ... Respondent2/ Respondent1
3. K.Suganthi ... Respondent3/ Respondent3
4. Branch Manager, M/s. Oriental Insurance
Company Limited, 22-C Saradha College,
Main Road, Salem ... Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 05.07.2005 made in M.C.O.P.No.370 of 1998 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Chengalpattu.

For Appellant : M/s. R.Sreevidhya
For Respondents : No Appearance.

J U D G M E N T

The claimant, V.Kalaichelvan, aged 31, Senior Executive Officer, in Forwarding and Clearing Division, Madras, earning a sum of Rs.5,000/- per month, met with an accident on 16.04.1998. He suffered compound fracture of left leg and crush injury over the left leg knee including left side face, which was completely damaged and also undergone plastic surgery. Alleging that the said injuries resulted in the permanent disablement and consequent loss of earning capacity, the claimant filed the claim petition for compensation claiming a sum of Rs.5,00,000/-. As against the claim made, the Tribunal has passed an award for a sum of Rs.2,60,000/-, under the following breakup details:-

Medical expenses	-	Rs.1,00,000.00
Transport expenses	-	Rs. 10,000.00
Injuries	-	Rs. 75,000.00
Loss of future earnings on account of disablement	-	Rs. 50,000.00
Pain and sufferings	-	Rs. 25,000.00

Rs.2,60,000.00

2. Branding the award as excessive and exorbitant, this Appeal has been filed by the Insurance Company.

3. The learned counsel for the appellant / Insurance Company would submit that the Tribunal erred in holding that the lorry was parked in the middle of the road which was factually incorrect and P.W.1 had also admitted the position of the lorry and the contents of Ex.P-1-FIR was correct in all details and as such no negligence can be attributed to the owner and the insurer of the lorry. The learned counsel further submitted that the accident had happened due to rash and negligent driving on the part of the driver of the car / injured, who had failed to follow the rules of the road.

4. In order to appreciate the contentions raised, it is necessary to re-look into the details of the award passed.

5. The claimant has very clearly stated in his evidence that the injuries sustained by him are grievous in nature and that immediately after the accident he has taken treatment as inpatient for a period of three years and undergone plastic surgery in Balaji Hospital, Chennai and he is continuously taking private treatment.

6. Further, the Doctor has stated that because of several fractures suffered by the claimant, there is restriction in the movement of legs and therefore there will be difficulty in standing, walking, carrying heavy objects and also in squatting. Disfigurement has also stated to be one of the consequence. Considering all the cumulative facts and circumstances, the Doctor has certified the disablement at 35%. It is also to be pointed out that, when there had been compound fracture on left leg and crush injury over left leg knee, there will be difficulty in moving during physical work and consequently, there would be loss of earning capacity.

7. Considering the overall facts and circumstances of the case, it transpires that the findings on negligence and quantum are reasonable and they do not require any interference by this Court. Thus, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the MP is also dismissed.

8. The appellant / Insurance Company shall deposit the compensation amount as awarded by the Claims Tribunal, along with interests and costs, less the amount already deposited if any within a period of four weeks from the date of receipt of

a copy of this judgment. On such deposit being made, the Tribunal shall transfer the compensation award amount to the Savings Bank Account of the first respondent herein / injured through RTGS, within one week thereafter.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

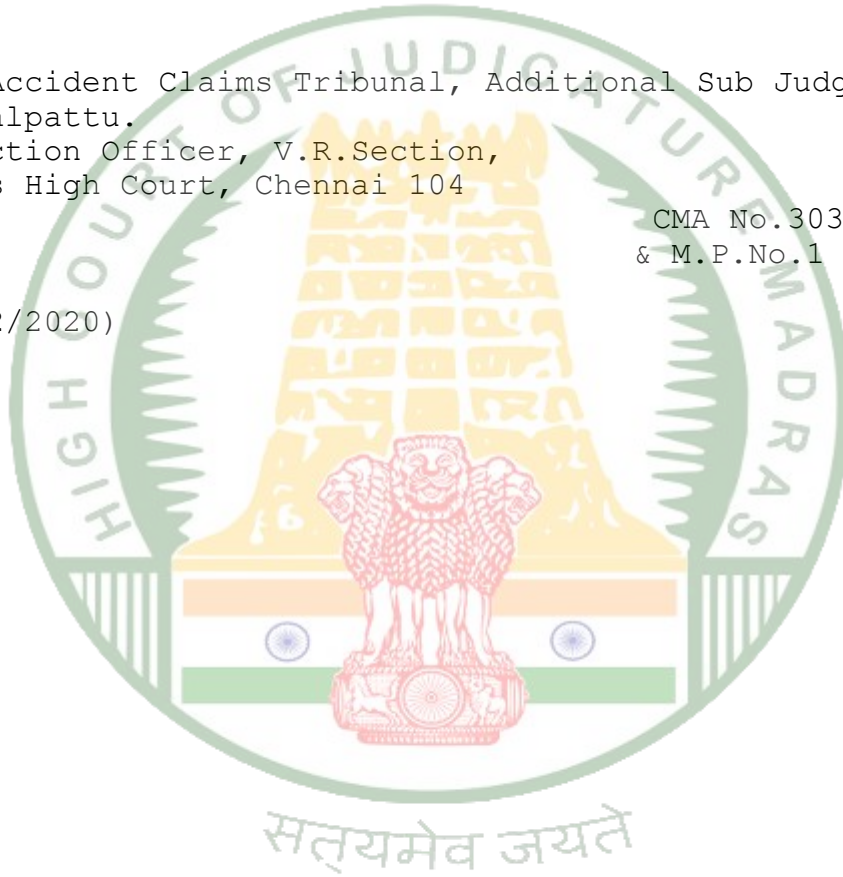
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To

1. Motor Accident Claims Tribunal, Additional Sub Judge, Chengalpattu.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

CMA No.3037 of 2006
& M.P.No.1 of 2006

A.SK(18/02/2020)



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