



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.2013 of 2011
and M.P.No.1 of 2011

United India Insurance Co., Ltd.,
1170, Mettur Road, II Floor,
Muthiah Complex,
Erode.

...Appellant/ third respondent

Vs.

1.Easwaran ..1st Respondent/ Petitioner
2.P.Murugan
3.T.Thangam
4.Shanmugam
5.A.Baby
6.The National Insurance Co., Ltd.,
Perundurai Road,
Near Teachers Colony Bus Stop,
Erode - 11.

... Respondents 2 to 6/ Respondents1,2&4 to 6

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 18.10.2010 made in M.C.O.P.No.16 of 2008 on the file of the MACT (CJM) at Erode.

For Appellant : Mr.T.Ravichandran
For Respondents : Mr.S.Kaithamalai Kumaran for R1
R2 to R6 - No Appearance

J U D G M E N T

The appellant is the 3rd respondent in M.C.O.P.No.16 of 2008, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Erode. The first respondent herein, filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 17.04.2008.



2.The brief case of the first respondent/claimant is as follows:

On 17.04.2008, at about 6.00 P.M, the first respondent/claimant was travelling in a Auto bearing Registration No. TN 33 C 7930, belonging to the third respondent herein, on Pallipalayam to Thiruchengode Road, K.S.R.College from East to West direction. The driver of the said Auto, drove the vehicle rashly and negligently and hit against a Lorry bearing Registration No. TN 36 B 0547, as a result of which, he sustained grievous injuries. According to the first respondent/claimant, the rash and negligent driving of the driver of the Auto bearing Registration No. TN 33 C 7930 was the cause of the accident, and that, since the said Auto was insured with the third respondent herein, both the present appellant and third respondent herein, are jointly and severally liable to pay compensation of Rs.3,00,000/- to him.

3.The United India Insurance Company Limited preferred this present appeal under Section 173 of the Motor Vehicles Act, 1988, against the compensation awarded by the Tribunal.

4. The learned counsel appearing for the appellant would contend that the Tribunal has wrongly adopted multiplier method, when the disability sustained by the claimant is only Partial Permanent Disability and not Functional Disability.

5.Heard both sides and perused the materials available on record.

6.After perusing the order passed in the above M.C.O.P.No.16 of 2008, it is seen that the accident had taken place only due to the rash and negligent driving of the driver of the Auto bearing Registration No. TN 33 C 7930, belonging to the third respondent herein, and the finding of the Tribunal in this regard is confirmed.

7.The first respondent/claimant was examined by Dr.K.Periyasamy P.W.2, Dr.S.M.Duraisamy P.W.3 and marked Ex.P4 A.R copy, Ex.P9 Disability Certificate and also marked Ex.P10 and Ex.P11 X-Ray. Dr.K.Periyasamy (P.W.2) has stated that the angular rotation of the right shoulder is reduced by 60 degrees i.e., from 170 degree to 110 degree. Furthermore, a right hand front movement has been has been restricted to 80 degrees from 140 degrees and all the injuries are grievous in nature and accordingly, fixed the Partial Permanent Disability at 34%. Considering the nature of avocation of the first respondent/claimant, this



Partial Permanent Disability sustained by him does not cause any functional disability and therefore, adoption of the multiplier method by the Tribunal Court is unwarranted and the same is hereby vacated. This Court is of the considered view that awarding a sum of Rs.2000/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.68,000/- has been awarded under the head Partial Permanent Disability.

8.As far as the non-conventional heads are concerned, this Court feels that the amounts awarded are very meagre. Therefore, a sum of Rs.25,000/-, Rs.15,000/- and Rs.10,000/- are awarded towards pain and sufferings, nutrition and nourishment and transportation respectively. Since, there is no amount awarded under the head loss of amenities, a sum of Rs.10,000/- is awarded under the same.

9.Accordingly, the award of the Tribunal in M.C.O.P.No. 16 of 2008 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Partial Permanent Disability	Rs.2,61,120/-	Rs.68,000/-
2.	Pain and Sufferings	Rs.15,000/-	Rs.25,000/-
3.	Nutrition and nourishment	Rs.8,000 /-	Rs.15,000 /-
4.	Transportation Charges	Rs.5000/-	Rs.10,000/-
5.	Loss of Amenities	NIL	Rs.10,000/-
6.	Medical Expenses	Rs.740/-	Rs.740/-
	Total	Rs.2,89,860/-	Rs.1,28,740

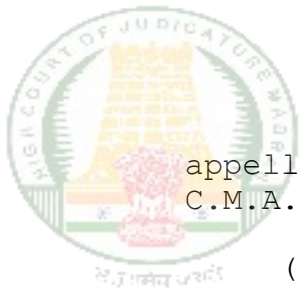
The compensation awarded by the Tribunal is reduced from Rs.2,89,860/- to Rs.1,28,740/- which shall carry interest at the rate of 7.5% per interest.

10.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.2,89,860/- to Rs.1,28,740/-.

(iii) This Court while granting interim stay order directed to deposit the entire award amount by the



appellant/insurance company in M.P.No.1 of 2011 in C.M.A.No.2013 of 2011.

(iv) Out of the deposited amount, the first respondent/claimant is permitted to withdraw the modified amount of Rs.1,28,740/- with proportionate interest, after adjusting the amount already withdrawn, if any.

(v) The appellant/insurance company is at liberty to withdraw the balance amount lying in the credit of M.C.O.P.No.16 of 2008, dated 18.10.2010, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate).

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rna
To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Erode.

+1cc to Mr.T.Ravichandran , Advocate SR.No. 15195

+1cc to Mr.S.Kaithamalai , Advocate SR.No. 15081

C.M.A.No.2013 of 2011
and M.P.No.1 of 2011

A.SK(03/10/2019)