

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2868 of 2015

M/s.United India Insurance Company Ltd
Sillingi Buildings,
TP Hub. 4th Floor,
134, Greams Road, Chennai. Appellant/
RespondentNo.2

Vs.

1.S.Ezhil ... Respondent 1/ Petitioner
2.S.Sulthan Sheriff (Ex-parte) ... Respondent2/ Respondent1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2015 and made in M.C.O.P.No.3022 of 2012, on the file of the Motor Accident Claims Tribunal (IV SCC), Chennai.

For Appellant : Mr.G.Udaya Sankar

For Respondents : Mr.L.P.Shanmugasundaram
for R1
R2-Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.3022 of 2012, dated 28.04.2015, on the file of the Motor Accidents Claims Tribunal (In the IV Court of Small Causes, Chennai).

2. The respondent herein, who is the appellant/claimant, has filed M.C.O.P.No.3022 of 2012, on the file of the Motor Accidents Claims Tribunal (In the IV Court of Small Causes, Chennai), claiming a sum of Rs.6,00,000/- as compensation for the injured person/first respondent, in the accident that took place on 07.05.2012 at about 6.00 p.m., the first respondent was pedestrian in United Colony Main Road near Masuthi from east to west direction, at that time, the second respondent's vehicle bearing Regn.No.TN-05-AM-0216 came in the same road from opposite direction with high speed in a rash and

negligent manner endangering public safety hit against the petitioner, due to which, the petitioner got grievous injuries. Since the accident has happened only due to rash and negligent driving of the vehicle by its driver. The second respondent is the owner of the offending vehicle and the appellant is the insurer of the second respondent vehicle. The first respondent claimed total compensation of Rs.6,00,000/- from the appellant.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the second respondent and directed the appellant/United India Insurance Company Limited to pay the compensation of a sum of Rs.5,08,000/- to the first respondent jointly or separately.

4. Before the Tribunal, on the side of the claimants, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

- (a)Ex.P1 : Copy of FIR
- (b)Ex.P2 : Copy of Accident Register
- (c)Ex.P3 : Copy of Sketch
- (d)Ex.P4 : Registration Certificate
- (e)Ex.P5 : Copy of Insurance Policy
- (f)Ex.P6 : Driving licence of respondent
- (g)Ex.P7 : Hospital Bills
- (h)Ex.P8 : Discharge Summary
- (i)Ex.P9 : Disability Certificate
- (j)Ex.P10 : C.T.Scan Report-Spine
- (k)Ex.P11 : X-ray

On the side of the respondents, none were examined and no exhibits were marked.

5. Aggrieved by the award, the Insurance Company has filed the present appeal.

6. The learned counsel for the appellant/ Insurance Company submitted contended that the accident occurred only due to the rash and negligent driving of the injured person. Further, his grievance is that there is no proof for occupation of income of the deceased and in the absence of any details, the Tribunal erroneously fixed the monthly income at Rs.50,000/- without any basis and on the whole the sum awarded by the Tribunal under other heads is also excessive and arbitrary. The Tribunal has awarded the huge amount of Rs.1,00,000/- towards the pain and suffering which is very much disproportionate to the injury. The Tribunal has awarded a sum of Rs.75,000/- towards the extra nourishment, Rs.40,000/- towards attender charges and also Rs.50,000/- towards transportation, without any basis and far away from the reality. The Tribunal has awarded a sum of Rs.50,000/-,

when the medical expenses are not incurred more than Rs.4,700/-, and no hospitalization, and the injury was treated conservatively, for two days (07.05.2012 @ 6.00 P.M., to 09.05.2012), in health center. The tribunal has awarded an amount of Rs.50,000/- towards the marriage prospects, which is also very high.

7. The learned counsel appearing for the 1st respondent submitted that on 07.05.2012 at about 6.00 p.m., the first respondent was pedestrian in United Colony Main Road near Masuthi, the second respondent's vehicle bearing Regn.No.TN-05-AM-0216 came in the same road from opposite direction with high speed in a rash and negligent manner endangering public safety hit against the petitioner, due to which, the petitioner got grievous injuries. Since the accident has happened only due to rash and negligent driving of the vehicle by its driver. The second respondent is the owner of the accident vehicle and the appellant is the insurer of the second respondent vehicle. The first respondent is claiming total compensation of Rs.6,00,000/- from the appellant. But the Tribunal has only awarded a sum of Rs.5,08,000/-.

8. On perusal of records it is seen that the materials have been furnished by the claimant regarding the age, income and occupation of the deceased and the same are taken into consideration by the Tribunal. The learned Tribunal ought to have seen that there is no total permanent disability, and went wrong in concluding that the injury which has been caused to the first respondent herein/claimant before the Learned Tribunal, who has been examined clinically by Dr.Sarvanabavanandam (P.W.-2) and deposed before the learned Tribunal and given the disability at 25% being a partial disability. The Tribunal has taken the disability at 20% and fixed a sum of Rs.3,000/- per percentage and awarded a sum of Rs.60,000/- (Rs.3,000 X 20). This Court by considering the nature of disability, has reduced the disability at 10% and taking Rs. 3000/- per percentage, arrived at Rs.30,000/- for disability. Similarly, the sum awarded by the Tribunal at Rs.1,00,000/- towards pain and suffering is reduced to Rs.25,000/-, and the sum awarded for Extra Nourishments at Rs.75,000/- is reduced to Rs.10,000/-. The Tribunal awarded a sum of Rs.50,000/- for transport is reduced to Rs.5,000/-, Rs.3,000/- for damages to clothes is reduced to Rs.500/-. The Tribunal awarded a sum of Rs.40,000/- for attender charges is reduced to Rs.2,000/-, Rs.5,000/- for Medical Expenses is reduced to Rs.4,700/- and by considering the nature of the injuries, the Tribunal has awarded a sum of Rs.60,000/- for a period of six months at the rate of Rs.10,000/- per month under the head of loss of income, this Court finds excessive by considering the nature of injuries and the period of treatment undergone by the claimant, this Court is inclined to fix the notional income at Rs.10,000/- and the same is awarded under the head "loss of income". The sum awarded by the Tribunal under the heads future medical expenses, loss of

earning power, marriage prospects are found proper and reasonable, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

9. Hence the total compensation payable to the claimant is as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Disability at 20% at the rate of Rs.3000/- per percentage	Rs.60,000/-	Rs.30,000/-
2.	Pain and Suffering	Rs.1,00,000/-	Rs.25,000/-
3.	Extra Nourishment	Rs.75,000/-	Rs.10,000/-
4.	Transport to Hospital	Rs.50,000/-	Rs.5,000/-
5.	Damages to clothes	Rs.3,000/-	Rs.500/-
6.	Attender Charges	Rs.40,000/-	Rs.2,000/-
7.	Medical Expenses	Rs.5,000/-	Rs.4,700/-
8.	Future Medical Expenses	Rs.50,000/-	Rs.50,000/-
9.	Loss of Income	Rs.60,000/-	Rs.10,000/-
10.	Loss of earning Power	Rs.10,000/-	Rs.10,000/-
11.	Marriage Prospects	Rs.50,000/-	Rs.50,000/-
	Total	Rs.5,08,000/-	Rs.1,97,200/-

10. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.5,08,000/- is reduced to Rs.1,97,200/-. No costs.

11. The appellant/United India Insurance Company Limited is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account

through NEFT or RTGS within a period of one week thereon. The claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb
To

The IV Judge,
Small Causes Court, Chennai.

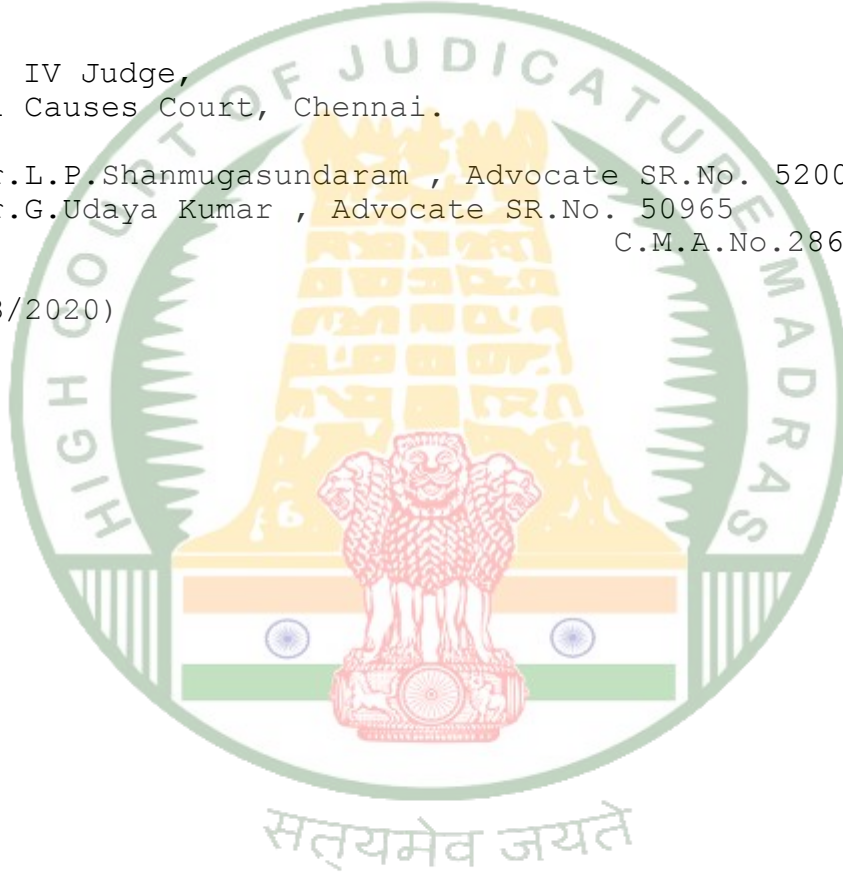
+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 52005

+1cc to Mr.G.Udaya Kumar , Advocate SR.No. 50965

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PPA

A.SK(10/03/2020)



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