

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 716 of 2018

The Branch Manager
Shiram General Insurance Co., Ltd,
E-8, R.I.I.C.O Industrial Area,
Sita pura, Jaipur,
Rajasthan - 302 022

C/o.The Manager-Claims,
Shriram General Insurance Co. Ltd,
2nd Floor, Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004. ... Appellant/2nd Respondent

Vs.

1.B.Madhu ...1st Respondent/Claimant
2.C.Nagaraj ...2nd Respondent/1st respondent

PRAYER :Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the decree and judgment dated 15.03.2017 made in M.C.O.P.No.24 of 2015 on the file of Motor Accident Claims Tribunal (Sub Court), Hosur.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : No Appearance

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JUDGMENT
(Delivered by M.M.SUNDRESH., J)

This appeal has been filed challenging the award passed in M.C.O.P.No.24 of 2015 by the Motor Accident Claims Tribunal (Sub Court), Hosur with respect to the quantum alone.

2. Heard the learned counsel appearing for the appellant. Despite service of notice and the name of the first respondent and the name of the counsel for the second respondent having been printed in the cause list, none appears for the respondents/claimants. We also permitted the learned counsel appearing for the appellant to serve notice on the learned counsel for the respondents which also did not elicit any response. Hence, we are proceeding with the matter on merit.

3. It is a case of the injury suffered by the first respondent/claimant. He was driving a TVS Sport bike bearing Registration No.AP 03 BH 1564 on 24.03.2014. The vehicle dashed against the Bolero Maxi Truck bearing Registration No. TN 30 S 7459, which has been insured with the appellant. The deceased underwent surgery and was in-patient between 24.03.2014 and 02.04.2014 in a private hospital. The Medical Board who examined the claimant has opined that he suffered 70% permanent disability.

4. Before the Tribunal, the claimant sought for compensation of Rs.50 lakhs and has marked Exs.P1 to P15 apart from examining himself as P.W.1. On behalf of the appellant, one witness has been examined and Exs.R1 to R5 were marked.

5. The Tribunal converted the permanent disability into functional disability and fixed the loss of income at Rs.26,20,800/-. Under the conventional heads such as pain and suffering, medical expenses, extra nourishment, transportation expenses, Rs.1,00,000/-, Rs.7,70,000/-, Rs.25,000/- and Rs.1,74,200/- respectively have been awarded. Accordingly, total compensation of Rs.37,10,000/- has been awarded.

6. The learned counsel appearing for the appellant would submit that there is no material evidence to show that there is loss of income. The functional disability has been taken at 70% by converting 70% permanent disability. The first respondent/claimant has not given any evidence that he was removed from the service thereafter. Without any basis, a sum of Rs.13,000/- has been taken as salary. The salary certificate has not been marked through the employer. The bills produced for the transport expenses are bogus. On perusal, it could be seen that some of the bills are pertaining to the bus and not the car. These bills also had a column for seat numbers also indicate that the vehicles are being used for tour. Therefore, the appeal will have to be allowed.

7. The Medical Board on examination found that the claimant suffered 70% permanent disability. The Tribunal, converted this

into 70% functional disability. We are of the view that the projection of the Tribunal is not correct. The functional disability is different from permanent disability. Secondly, there is no clear evidence with respect to the loss of job. However, we find that there is some evidence to the effect that the employer has stated to have informed the claimant that there would be protection after he recovered. We may note, the employer has not been examined. Notwithstanding the above, we cannot hold that there is no functional disability as such. The findings of the Tribunal after appreciating the Report of the Medical Board was to the effect that the claimant due to fracture suffered cannot walk for a longer period. He cannot bend his right leg. Apart from the same, he had tip of his middle finger on the left hand lacerated. Thus, considering the above, we fix the functional disability at 50%.

8. Accordingly, by taking the monthly income at Rs.13,000/- and adding 40% towards future prospects, we fix the loss of income at Rs.17,47,200/- (Rs.13,000/- + 40% of Rs.13,000/- x 12 x 16 = Rs.17,47,200/-). We are not disputing the amount fixed for pain and suffering and the medical expenses and the same are accordingly confirmed. In the light of the discussion made above, we only fix Rs.25,000/- towards transportation, while confirming other two heads viz., extra nourishment and charges for medical attendant. Thus, we fix the compensation at Rs.26,87,200/- (Rs.17,47,200/- + Rs.1,00,000/- + Rs.7,70,000/- + Rs.25,000/- + Rs.20,000/- + Rs.25,000/- = Rs.26,87,200/-) which is rounded off to Rs.26,88,000/-.

9. In the result, the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected C.M.P.No.6467 of 2017 is closed.

10. The appellant insurance company is directed to deposit the reduced compensation amount along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.24 of 2015 on the file of Motor Accident Claims Tribunal (Sub Court), Hosur, within a period of eight weeks from the date of receipt of a copy of the judgment.

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11. We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

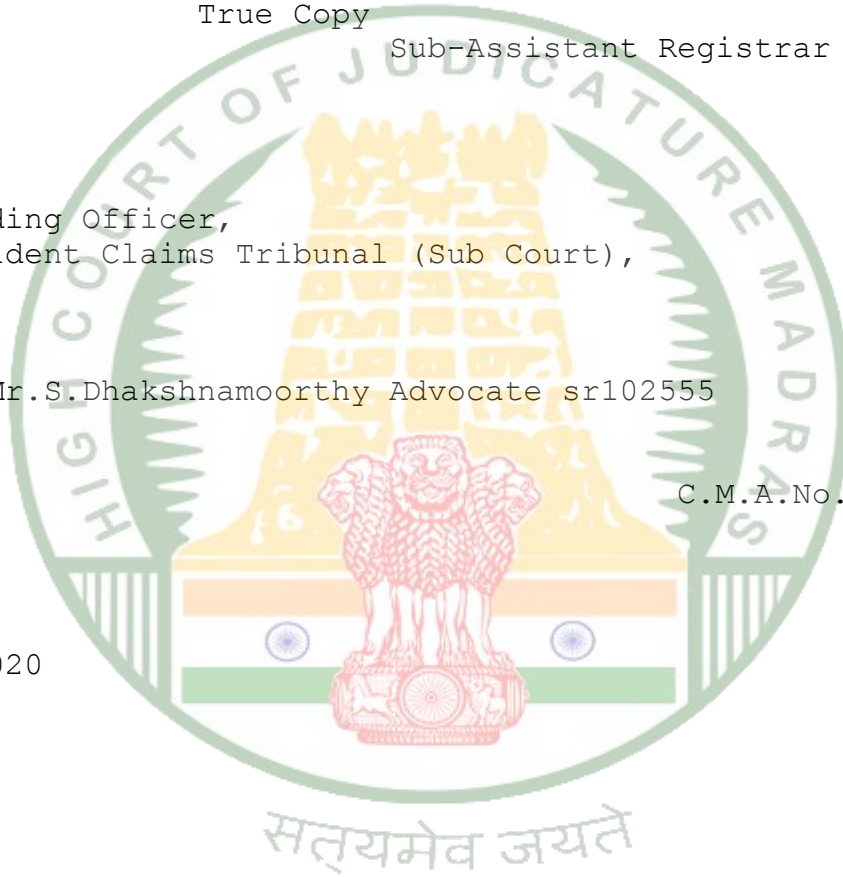
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To

The Presiding Officer,
Motor Accident Claims Tribunal (Sub Court),
Hosur.

+1 cc to Mr.S.Dhakshnamoorthy Advocate sr102555

C.M.A.No.716 of 2018

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