

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.1001 of 2014
and
M.P.No.1 of 2014

The Branch Manager,
M/s.New India Assurance Company Limited,
II Floor, Jeewan Deep Building,
No.8, Parliament Street,
New Delhi - 110 001.

...Appellant/2nd Respondent

Vs.

1.Senthil Kumar ...Ist Respondent/Petitioner

2.Murugesan ...2nd Respondent/Ist Rspondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.02.2013 passed in MCOP.No.415 of 2011, on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : No appearance

J U D G M E N T

The Branch Manager, New India Assurance Company Limited, the second respondent in MCOP.No.415 of 2011 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The case of the claimant is that on 12.03.2011, at about 04.00 am, when he was travelling in a Maruthi Omni bearing Registration No. TN 39 AB 0229 on Tiruppur - Kangeyam road, the driver of the Maruthi Omni drove the vehicle rashly and negligently and hit the centre median, as a result of which, the claimant sustained injuries all over his body. According to the

claimant, the accident took place due to the rash and negligent driving of the driver of the Maruthi Omni bearing Registration No. TN 39 AB 0229 belonging to the second respondent and that since the said Maruthi Omni was insured with the present appellant, both of them are jointly and severally liable to pay a compensation of Rs.10,00,000/- to him.

3. The second respondent, owner of the Maruthi Omni remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant, New India Assurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / I Additional District Judge, Tiruppur after analysing the evidence on record, awarded a compensation of Rs.4,01,401/- together with interest at the rate of 7.5% per annum. Aggrieved over the Award passed by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant contended that when the discharge summary (Ex.P2) clearly shows that the claimant sustained only a fracture of his right ankle and right knee, the Tribunal had fixed the partial permanent disability as 35%. His specific contention is that in the facts and circumstances of the present case, only 20% should be taken up for calculating partial permanent disability.

5. No appearance on behalf of the respondents.

6. A perusal of the records shows that Dr.Senthilkumar (PW2) had assessed the partial permanent disability as 42% and the Tribunal has reduced the same by 35%. It is also pertinent to point out that Dr.Senthilkumar (PW2) who had issued the disability certificate (Ex.P4) is not the Doctor who gave treatment to the injured. The Doctor had assessed the disability as 42% for a fracture on the right ankle. Therefore, in the facts and circumstances of the present case, the partial permanent disability is fixed as 25% and since the claimant is a vendor, adopting multiplier method is warranted as per the decision of the Division Bench of the Honourable Supreme Court of India in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. The Tribunal has fixed the monthly income of the claimant as Rs.5,000/- and had also assigned proper reasons for fixing the same and therefore, the same is hereby confirmed. Since the age of the claimant was 37 years on the date of the

accident, the proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The partial permanent disability is calculated as below:

$$\begin{aligned}\text{Partial Permanent disability} &= \text{Rs.}5,000/- \times 12 \times 15 \times 25/100 \\ &= \text{Rs.}2,25,000/-\end{aligned}$$

7. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Partial Permanent Disability	Rs.2,25,000/-
2.	Pain and Suffering	Rs.25,000/-
3.	Medical Expenses	Rs.16,401/-
4.	Attender's charges	Rs.5,000/-
5.	Transportation	Rs.10,000/-
6.	Extra Nourishment	Rs.5,000/-
7.	Loss of amenities	Rs.5,000/-
	Total	Rs.2,91,401/-

Thus the quantum of compensation awarded by the Tribunal is scaled down from Rs.4,01,401/- to Rs.2,91,401/- which would carry interest at the rate of 7.5% per annum.

8. 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 scaled down from Rs.4,01,401/- to Rs.2,91,401/-

(iii) The appellant, New India Assurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.2,91,401/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.415 of 2011 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Tiruppur within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/claimant is at liberty to withdraw the same after following due process of law.

(v) The appellant / New India Assurance Company Limited is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

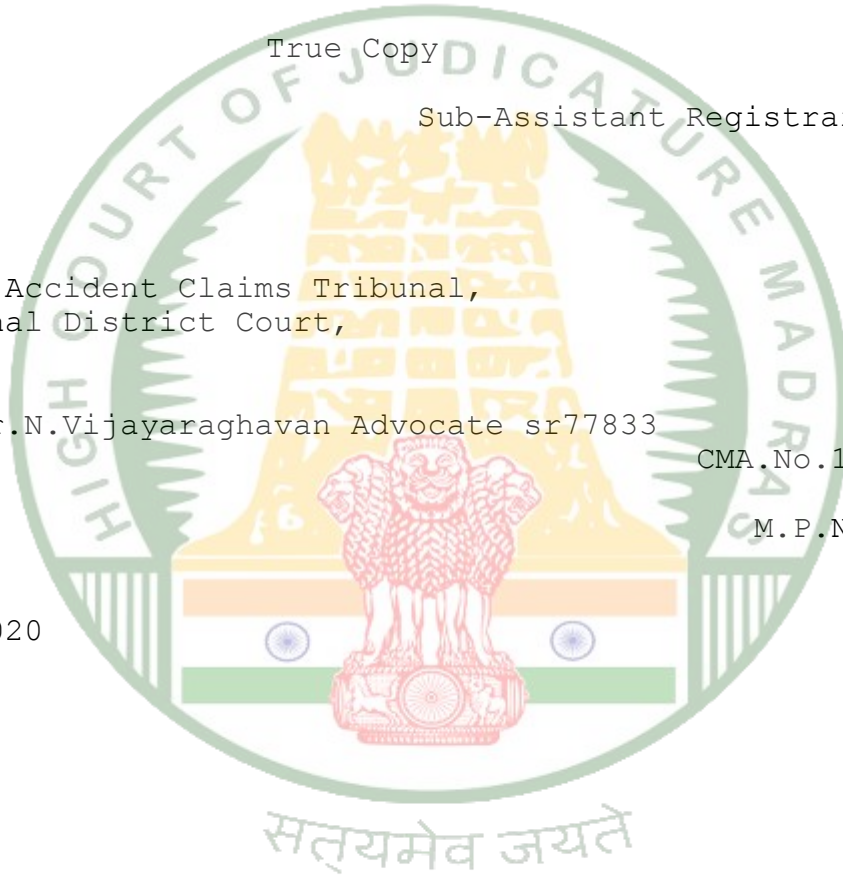
mbi/dua
To

The Motor Accident Claims Tribunal,
I Additional District Court,
Tiruppur.

+1cc to Mr.N.Vijayaraghavan Advocate sr77833

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