



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

AND

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No. 835 of 2018

and

C.M.P. (MD) No. 1548 of 2019

M/s. TATA AIG General Insurance Company Limited,
Peninsula Corporate,
Piramal Tower, 9th Floor,
Ganpatroa Kandan Mark,
Lower Parel,
Mumbai-400 013.

.. Appellant/2nd respondent

Vs.

1. Marimuthu
2. Shanthi Poultry Private Limited,
6/15, Main Road,
Pappampatti,
Coimbatore-641 016.

... 1st respondent/Petitioner

.. 2nd respondent/1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.3/2015, dated 11.12.2017, by the Motor Accidents Claims Tribunal (Sub Court), Sivakasi.

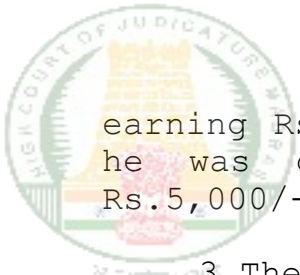
For Appellant	: Mr. B. Vijay Karthikeyan
For R1	: Mr. A. Sivaji
For R2	: No appearance

J U D G M E N T

[Judgment of the Court was delivered by **K. KALYANASUNDARAM, J**]

Assailing the award of the Motor Accidents Claims Tribunal (Sub Court), Sivakasi, passed in M.C.O.P.No.3 of 2015, the Insurance Company has preferred this appeal.

2. It is a case of injury and the claimant, at the time of accident, was 31 years. According to the claimant, on 03.06.2014, when he was driving the motor cycle, a Eicher van, which is coming from opposite direction and driven by its driver in rash and negligent manner rammed the vehicle. In the accident, he sustained grievous injuries and multiple fractures. Immediately, he was taken to Government Rajaji Hospital and he took treatment as inpatient till 09.08.2014. He underwent surgeries and skin crafting was also performed. It is his further case that he was



earning Rs.15,000/- per month, as the salary and apart from that, he was doing milk vending business and thereby, he earned Rs.5,000/- per month.

3.The appellant Insurance Company filed a detailed counter, denying and disputing the allegations made by the claimant. It is further stated that the petitioner did not have valid driving licence and he violated the provisions of the Motor Vehicles Act and rules and the claim was excessive.

4.The parties had let in oral and documentary evidence before the trial court. The Tribunal upon consideration of evidence, awarded a sum of Rs.35,87,338/- along with interest at 7.5%. Challenging the same, the present civil miscellaneous appeal has been filed.

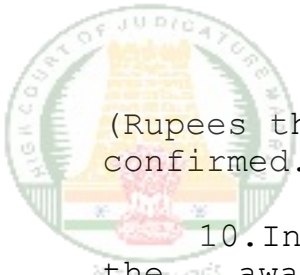
5.Mr.Vijaya Karthikeyan, learned counsel for the appellant would argue that the tribunal, without proper appreciation of evidence, has taken monthly income at Rs.22,000/- and awarded higher compensation and the award under other heads are also excessive.

6.Per contra, Mr.Sivaji, learned counsel for the claimant made submissions in support of the decision of the Tribunal.

7.This appeal has been filed only challenging the quantum and liability and finding on negligence are not in dispute.

8.In the instant case, the claimant examined himself as P.W.1 and examined one Venkatesh as P.W.2. According to the evidence of P.Ws.1 & 2, the claimant was working as a driver in Sree Balaji Transport and Ex.P.12 is the salary certificate; Ex.P.13 was filed to establish that the claimant was doing milk vending business. Though the claimant and P.W.2 have stated that the claimant was earning Rs.25,000/- per month and a salary certificate was marked. In our considered opinion, the monthly income of the claimant can be fixed only at Rs.10,000/-. He is also entitled for 40% addition towards future prospects. Hence, the income is arrived at Rs.14,000/-.

9.The claimant was aged about 31 years on the date of accident and the amputation of the leg of the claimant are not disputed. Hence, the Tribunal has rightly taken the disability as 100%. By applying multiplier 16, this Court awards a sum of Rs.26,88,000/- (14,000 x 12 x 16) for loss of income. The Tribunal has awarded Rs.2,11,538/- towards medical expenses, based on Exs.P.9 and P.10, hence, it is confirmed. The award amount of Rs.1,00,000/- towards pain and suffering is reasonable and hence, it is confirmed. Rs.5,000/- awarded towards extra nourishment is enhanced to Rs.30,000/-. A sum of Rs.1,02,800/- awarded towards transportation is reduced to Rs.12,000/-. Hence, the claimant is entitled for the award of Rs.30,41,538/-, which is rounded off to Rs.30,40,000/-



(Rupees thirty lakhs forty thousand only). The interest of 7.5% is confirmed.

10. In the result, this appeal is partly allowed. Accordingly, the award amount is reduced from Rs.35,87,338/- to Rs.30,40,000/-. The Insurance Company is directed to deposit the modified compensation now awarded, less the amount if any already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the entire amount with accrued interest and costs, less the amount already withdrawn if any, by filing an application before the Tribunal. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

Vs

To

The Motor Accidents Claims Tribunal (Sub Court),
Sivakasi.

COPY TO

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.B.VIJAY KARTHIKEYAN, Advocate Sr. No. 59926

+1CC TO MR.A.SIVAJI, Advocate Sr. No. 60162

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and

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(CO)

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