

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3411 of 2012

and

M.P. No.1 of 2012

The National Insurance Co. Ltd.,
Represented by its Divisional Manager,
194-A, Nethaji Road,
Tiruvarur Town and MunsifAppellant/2nd Respondent

vs.

1. Alagesan ...1st Respondent/Claimant
2.Sundaresan ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01/08/2008 in M.C.O.P.No.5 of 2006 on the file of the Court of the Motor Accident Claims Tribunal, Mannargudi (Subordinate Court)

For Appellant : Mr.S.Vadivel

For Respondents: Mr.D. Lakshmipathy for R1
R2 - Insufficient address

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 01.08.2008 passed by the Motor Accidents Claims Tribunal, (Sub Court), Mannargudi in MCOP No.5 of 2006.

2. The first respondent sustained injuries on 15.11.2005 as a result of an accident caused by a vehicle, owned by the second respondent and insured with the appellant. He preferred a claim before the Motor Accidents Claims Tribunal (Sub Court), Mannargudi in MCOP No.5 of 2006 seeking compensation for the injuries sustained by him.

3. The Motor Accidents Claims Tribunal, (Sub Court), Mannargudi under the impugned award directed the appellant / Insurance Company to pay the first respondent / claimant a compensation of Rs.2,80,000/- together with interests and costs.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	2,00,000
Pain and suffering	15,000
Disability @ 56%	56,000
Medical expenses	5,000
Transportation	4,000
Total	2,80,000

5. The appellant / Insurance Company has challenged the impugned award on the ground that the quantum of compensation awarded by the Tribunal to the first respondent is excessive.

6. Heard Mr.S.Vadivel, learned counsel for the appellant and Mr.D.Lakshmipathy learned counsel for the first respondent. Notice sent to the second respondent has been returned with the endorsement "insufficient address". Since this Court is going to confirm the award of the Tribunal, the notice to the second respondent is dispensed with.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. Before the Tribunal, the first respondent / claimant has filed 14 documents which were marked as Exs.P1 to P14 and two witnesses were examined on his side viz., the first respondent / claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the appellant / Insurance company neither any document was filed nor any witness examined before the Tribunal.

9. In the claim petition the first respondent / claimant has pleaded that he was a Reporter and an advertising agent, aged 45 years and was earning Rs.10,000/-p.m. at the time of the accident. However, the Tribunal has fixed the notional monthly income of the first respondent / claimant at Rs.6,000/-and also deducted Rs.2000/- towards his personal expenses. The Tribunal has erroneously deducted Rs.2,000/- from the monthly income.

Since it is an injury claim, such a deduction ought not to have been made by the Tribunal. The first respondent / claimant has suffered 56% disability as a result of the injuries sustained by him due to the accident. The Tribunal has awarded a lump sum compensation of Rs.2,00,000/- to the first respondent / claimant towards his disability. The accident happened in the year 2005. The first respondent / claimant has suffered the following injuries as a result of the accident.

- a. Fracture in the left humerus,
- b. Fracture in the left tibia and
- c. injury in the hip.

If the multiplier method is adopted by the Tribunal, the compensation awarded towards loss of income to the first respondent / claimant would have been much higher. Further, no compensation has been awarded by the Tribunal towards loss of amenities and attender charges. If compensation was awarded under the afore mentioned heads, the total compensation payable to the first respondent would have been much higher. The Tribunal has awarded a compensation of Rs.15,000/- towards pain and suffering, Rs.5000/- towards medical expenses and Rs.4000/- towards transportation costs. In all, the total compensation awarded to the first respondent by the Tribunal is Rs.2,80,000/-. By taking an overall view of the compensation awarded by the Tribunal, this Court is of the considered view that the same cannot be considered to be excessive as alleged by the appellant.

10. However, the rate of interest awarded by the Tribunal under the impugned is 9.5%, which is not in accordance with the settled practice adopted by Tribunals all over the State of Tamil Nadu. Accordingly this Court fixes the rate of interest at 7.5% in accordance with the settled practice.

11. Excepting for the above referred modification to the rate of interest, this Court does not find any infirmity in the impugned award passed by the Tribunal.

12. In the result, the Civil Miscellaneous Appeal filed by the appellant / Insurance Company stands partly allowed, No costs. Consequently, connected miscellaneous petition stands closed.

13. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a., as modified by this Court from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.5 of 2006 on the file of the Subordinate Court, Motor Accident Claims

Tribunal, Mannargudi within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent / claimant through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

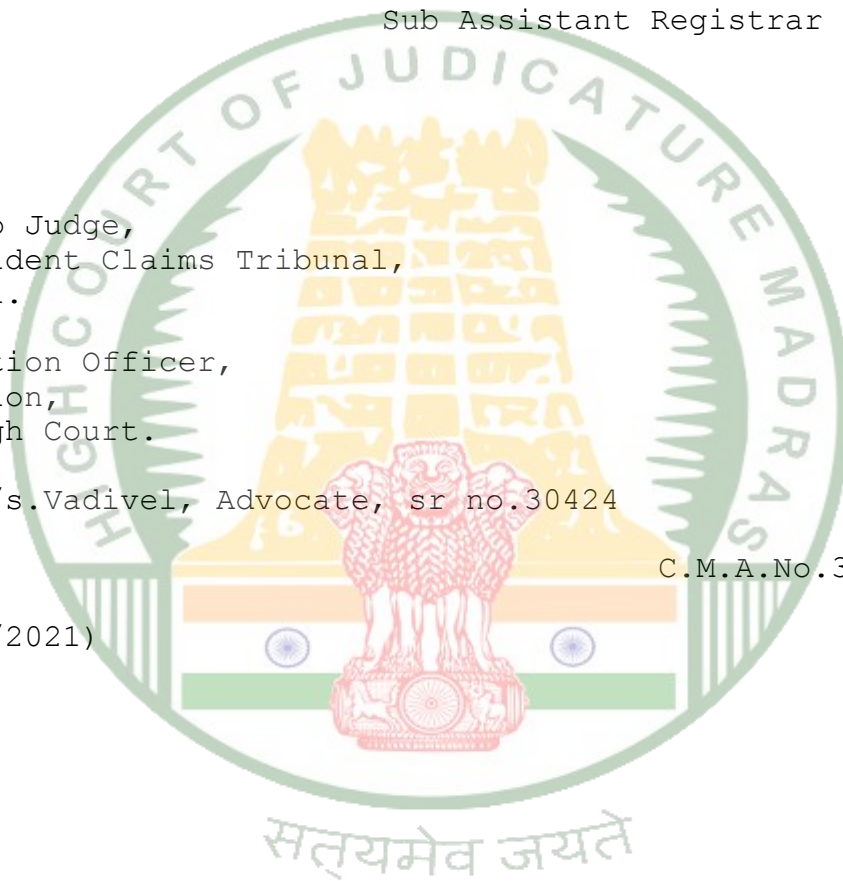
1. The Sub Judge,
Motor Accident Claims Tribunal,
Mannargudi.

2.The Section Officer,
V.R. Section,
Madras High Court.

+1cc to M/s.Vadivel, Advocate, sr no.30424

C.M.A.No.3411 of 2012

LN(CO)
RMP(26/04/2021)



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