

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.529 of 2012

and

M.P.No.1 of 2012

M/s.ICICI Lombard General
Insurance Co.Ltd.,
Rep., by its Branch Manager,
New Delhi-169 004. ... Appellant/3rd Respondent

Vs.

1.Ramakrishnan ...1st Respondent / Petitioner
2.Mohamed Arsath
3.Gurpreeth Singh ...2nd & 3rd Respondents/
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2011 made in M.C.O.P.No.1432 of 2008 on the file of Motor Accident Claims Tribunal, Principal Subordinate Judge, Tiruppur.

For Appellant : Mrs.R.Sreevidhya

For R1 : Mr.S.S.Swaminathan

For R2 & R3 : Ex-parte

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.6,00,800/- towards compensation to the first respondent, due to the injuries sustained by him in the accident.

2.The case in brief, is as follows:

On 04.02.2008 at about 15.30 hours, the first respondent was going by TN-09-H-1339 from south to north in the Covai to Avinashi NH-47 Main Road, near Sellathal Kovil, Karumathampatty.

By that time, a vehicle bearing registration number HR 38-M-7944 driven by the lorry driver in a rash and negligent manner, without adhering the traffic regulations and dashed against the first respondent. Due to the said accident, the first respondent sustained grievous injuries all over the body. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.6,00,800/- interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in holding the liability to pay the compensation, since the first respondent has driven the vehicle in a rash and negligent manner and dashed against the vehicle insured with the appellant. He also questioned the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

5.The learned counsel for the second respondent has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

7.It has been put forth on the side of the Insurance Company before the Tribunal that the place, date and time of the alleged accident are not admitted. In fact the very occurrence of the alleged accident involving the vehicle HR-38-M-7944 Lorry has been falsely implicated in the case. Ex.P1 is the First Information Report, which has been filed against the driver of the Lorry. The owner of the vehicle also deposed before the Tribunal that he had not seen the accident directly and he came to know about the occurrence, only from the driver. In these circumstances, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, this Court is not inclined to interfere with the factual findings of the Tribunal.

8. The Tribunal has awarded a sum of Rs.4,71,744/- towards "disability/ loss of earning capacity" by adopting the multiplier method. But, this Court is of the view that the multiplier method is not necessary for this case. Hence, remove

the multiplier method and awarded a sum of Rs.80,000/- (at the rate of Rs.2,000/-) for 40% of disability. The Tribunal has awarded a sum of Rs.3,000/-towards "Transportation" which is meagre and the same is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards "Nutrition" the same is also hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards "pain and sufferings" considering the nature of the injuries sustained by the claimant this Court is inclined to award a sum of Rs.30,000/- for the same. After considering the medical bills and receipts Tribunal has awarded a sum of Rs.1,61,021/- which is very correct and the same is hereby confirmed. The Tribunal has awarded any amounts towards attender "Attendant Charges", "Loss of amenities" and "loss of income", this Court is of the opinion and award a sum of Rs.20,000/-, Rs.30,000/- and Rs.50,000/- respectively. Thus, the compensation awarded by the Tribunal is modifies as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Disability loss of earning capacity	4,71,744/-	80,000/-	reduced
2	Transportation	3,000/-	10,000/-	enhanced
3	Nutritions	5,000/-	10,000/-	enhanced
4	Pain and Sufferings	5,000/-	30,000/-	enhanced
5	Medical expanses	1,16,021/-	1,16,021/-	confirmed
6	Attendant Charges	-----	20,000/-	granted
7	Loss of amenities	-----	30,000/-	granted
8	Loss of income	-----	50,000/-	granted
Total		6,00,765/- rounded off by 6,00,800/-	3,46,021/-	modified

9.The Tribunal has awarded a total sum of Rs.6,00,800/- the same is hereby reduced to Rs.3,46,021/-.

10.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The appellant Insurance Company is directed to deposit the compensation of Rs.3,46,021/- with interest at the rate of 7.5% per annum from the date of petition, after deducting the amount if any already deposited, within a period

of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbm

To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Tiruppur.

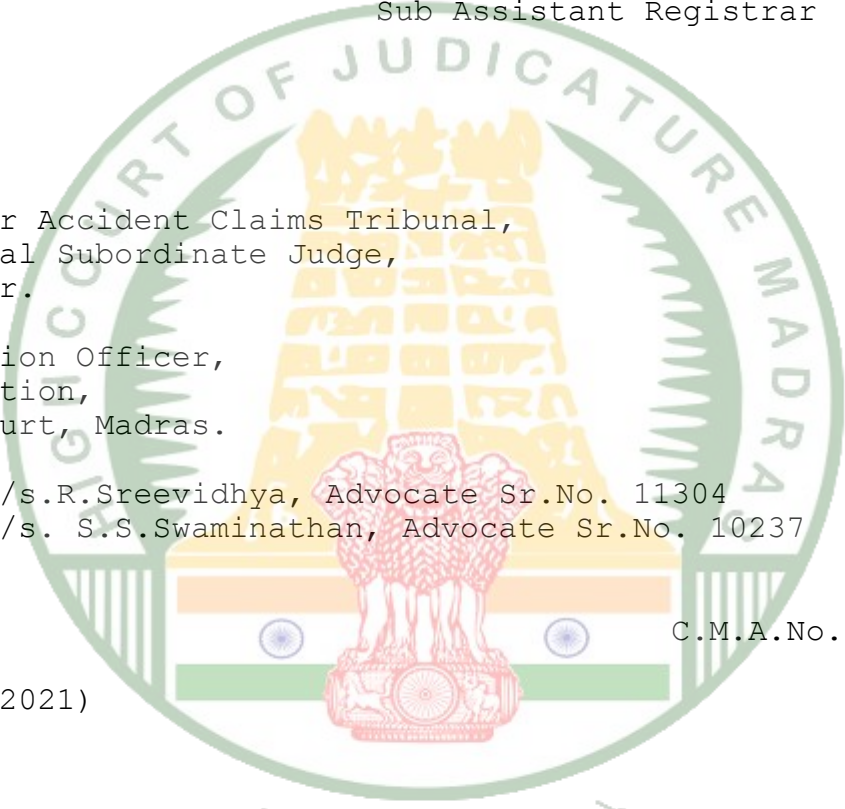
2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.R.Sreevidhya, Advocate Sr.No. 11304

+1 cc to M/s. S.S.Swaminathan, Advocate Sr.No. 10237

C.M.A.No.529 of 2012

BR (CO)
RMP (07/01/2021)



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