

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.2.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.Nos.2087 & 2184 of 2012

Illamaran ... Appellant in CMA.No.2087 of 2012

The New India Assurance Company Ltd.,
No.68, Purasawakkam High Road,
Chennai-7. ... Appellant in CMA.No.2184 of 2012

-Versus-

- 1) M/s.Paramount Heavy Carriers,
No.65, Old No.34, Coral Merchant Street,
Chennai-600 001.
 - 2) The New India Assurance Company Limited,
No.68, Purasawakkam High Road,
Chennai-600 007. ... Respondents in CMA.No.2087 of 2012
1. Illamaran
 2. M/s.Paramount Heavy Carriers,
No.65, Old No.34, Coral Merchant Street,
Chennai-7. ... Respondents in CMA.No.2184 of 2012

These civil Miscellaneous appeals are filed under Section 173 of the Motor Vehicles Act 1988 against the decree and judgment dated 22.02.2012 and made in M.C.O.P.No.3098 of 2009 on the file of Motor Accident Claims Tribunal, (IV Court of Small Causes, Chennai) .

For Appellant	: Mrs.Elveera Ravindran in CMA.No.2184/2012
For Appellant	: Mr.F.Terry Chella Raja in CMA.No.2087/2012
For Respondents	: Mr.F.Terry Chellaraja for R1 R2-Exparte in CMA.No.2184/2012

For Respondents : Mrs.Elveera Ravindran for R2
in CMA.No.2087/2012
R1-Exparte in CMA.No.2087/2012

C O M M O N J U D G E M E N T

Both the insurance company as well as claimant are before this court challenging the award passed by the Tribunal in the claim petition filed by the injured in the accident which occurred on 10.10.2005 fastening the liability on the insurance company and determining the compensation of Rs.10,26,900/-.

2. Heard the learned counsel appearing for the Insurance Company and Mr.F.Terry Chellaraja, the learned counsel appearing for the claimant.

3. The parties are referred to as above. While the claimant was working in the company, he was hit by the crane insured with the appellant insurance company, driven rash and negligently, resulting in amputation of right leg above the knee. The Tribunal, came to the conclusion that the accident occurred because of rash and negligent driving of the crane and fastened the liability on the Insurance Company.

4. The question to be decided is with regard to the quantum. It is seen that the claimant lost his right leg above the knee. Based on PW3 Doctor's evidence and Ex.P6, disability certificate, the Tribunal determined the disability at 65%. According to the learned counsel for the appellant the said determination is on the higher side. However, Mr.F.Terry Chellaraja, the learned counsel appearing for the first respondent would point out as per the Workmen Compensation Act, for amputation above the joint would result 70% disability. Therefore, as per the Workmen Compensation Act, this court redetermines the disability at 70%. Monthly income of Rs.4,500/- was rightly determined by the Tribunal, as the claimant was working as a cleaner at the time of accident.

5. The claimant was aged 21 years at the time of accident and therefore, as per judgement of the Hon'ble Supreme Court in Smt.Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. Reported in 2009 (2) TNMAC, 50% is required to be added as future prospect. If 50% future prospect is added, the income would be Rs.4500/- + 50% = 6750 . The age of the claimant was 21 years and the appropriate multiplier is 18.

6. Though the learned counsel for the claimant would state that there is 100% loss of income, this court confirms the loss of income as per 70% disability. The loss of income is determined as follows:
 $\text{Rs.4500/-} + 50\% \times 70/100 \times 18 \times 12 = \text{Rs.10,20,600/-}$.

7. Rs.36,000/- awarded towards loss of income for six months during the period of treatment; Rs.10,000/- awarded towards transportation; Rs.15000/- awarded towards extra-nourishment; Rs.1,69,200/- awarded as per Ex.P4, medical bills towards medical expenses; Rs.1,00,000/- awarded towards pain and suffering; Rs.1,00,000/- awarded towards loss of amenities are confirmed. Towards attender charges no amount was awarded and hence Rs.5,000/- is awarded. Since the claimant lost his leg, possibility of getting marriage is very bleak and no lady would come forward to marry a physically handicapped person. Therefore, Rs.50,000/- is awarded towards loss of marital prospects. The award of the Tribunal Rs.10,26,900/- is enhanced to Rs.15,05,800/- rounded off to Rs.15,06,000/- with 7.5 % interest per annum.

8. In view of the above, the appeal filed by the claimant namely CMA.No.2087 of 2012 is partly allowed and the appeal filed by the insurance company namely CMA.No.2184 of 2012 is dismissed. No costs. Consequently the connected M.P.Nos.1 and 1 of 2012 are closed.

9. The appellant is directed to deposit the entire award amount as per the order of this court along with interest and costs after deducting the amount already deposited, within four weeks from the date of the receipt of a copy of the order. On such deposit, 50% of the award amount alone is directed to be withdrawn by the claimant. The balance 50% of the award amount is directed to be kept in interest bearing fixed deposit in Indian Bank, High Court Branch, Chennai, even atleast for a period of six years. The appellant is directed to pay necessary additional court fee within two weeks from the date of the receipt of a copy of the order. The claimant is permitted to withdraw the accrued interest once in every two months.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS III)

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Sub Assistant Registrar

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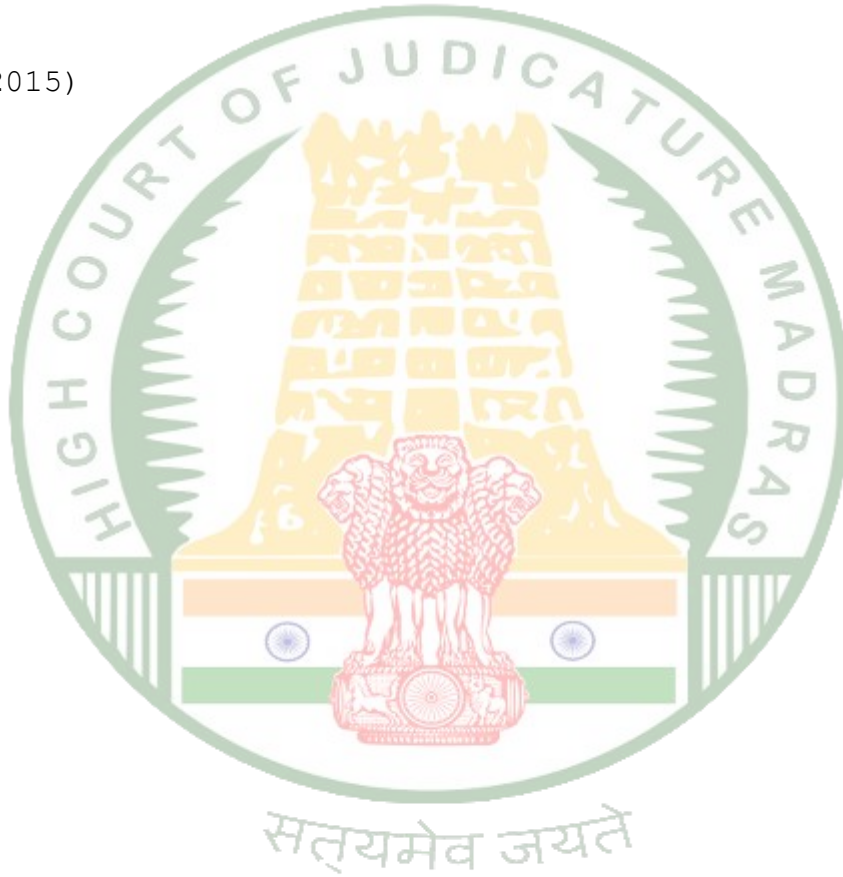
1. Motor Accident Claims Tribunal,
(IV Court of Small Causes, Chennai).

+1cc to Mr.M.Malar, Advocate, S.R.No.7200

+1cc to Ms.Elveera Ravindran, Advocate, S.R.No.7193

C.M.A.Nos.2087 and 2184 of 2012

JSV(CO)
CA(09/04/2015)



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