

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.Nos.2589 and 1820 of 2016
and C.M.P.No.18568 of 2016

C.M.A.No.2589 of 2016

United India Insurance Co. Ltd.
Silingi Building,
No.134, Greams Road,
Chennai - 600 006.

... Appellant / 2nd respondent

versus

1. Selvam ... 1st respondent / claimant
2. Karunanithi ... 2nd respondent/1st respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 23.04.2015 made in M.A.C.T.O.P.No.5783 of 2011 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant : Mr.Srinivasan Ramalingam
For R1 : Mr.Terry Chellaraja
For R2 : No appearance

C.M.A.No.1820 of 2016

Selvam ..Appellant/ Claimant
versus

1. Karunanithi
2. United India Insurance Co. Ltd.,
Silingi Building,
No.134, Greams Road,
Chennai - 600 006.

... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 23.04.2015 made in M.A.C.T.O.P.No.5783 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.Terry Chellaraja
For R1 : No appearance
For R2 : Mr.Srinivasan Ramalingam

COMMON JUDGMENT

The claimant, Selvam, aged about 45 years, an agriculturist cum coolie, earning a sum of Rs.500/- per day, met with an accident on 05.10.2010 and sustained injuries. Hence, he filed a claim petition in M.A.C.T.O.P.No.5783 of 2011 before the file

of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, claiming compensation of Rs.6,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.4,04,500/- as compensation under the following break-up details:

Loss of income for three months	-	Rs. 19,500/-
Transportation	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Damage to clothes	-	Rs. 5,000/-
Medical Expenses	-	Rs. 5,000/-
Attendant charges	-	Rs. 10,000/-
Loss of future earning capacity (Rs.6500 + 30% x 12 x 14 x 25%)	-	Rs.3,54,900/-
Total	-	Rs.4,04,400/-

1.2. Challenging the same, the Insurance Company has filed C.M.A.No.2589 of 2016, stating that the quantum of compensation is excessive, whereas the claimant has filed C.M.A.No.1829 of 2016, stating that the quantum of compensation is inadequate.

2. In order to appreciate the contentions raised on both sides, it is necessary to find out the nature of the injuries, period of treatment, impact of the disability upon the earning capacity of the claimant, if any.

2.1. The fact presented before the Court revealed that the claimant was aged about 45 years, an agriculturist cum coolie, earning a sum of Rs.500/- per day, who met with an accident, while riding his cycle from Panrutti to Gadulam.

2.1.1. The nature of the injuries suffered is fracture of skull, fracture of jaw and fracture of both side ribs, abdomen injury, apart from cut injury over left eye and multiple injury all over the body. The doctor has assessed the disability at 70% under Ex.P7. But, the Tribunal has taken the disability only at 25%.

2.1.2. Taking into the annual income of the claimant at Rs.6,500/- p.m., adding 30% towards future prospective increase in income and adopting the multiplier of 14, the loss of future earning capacity has been assessed by the Tribunal at Rs.3,54,900/- (Rs.6,500/- + 30% x 12 x 14 x 25%).

2.1.3. Mainly aggrieved over the award under the head 'loss of future earning capacity', the Insurance Company has preferred this appeal.

3. The grievance of the learned counsel for the Insurance Company is that the Tribunal, while referring to many cases of permanent disablement, wherein, the Tribunal did not adopt multiplier method of quantification, but has awarded disablement compensation by fixing Rs.3,000/- / Rs.2,000/- per percentage.

4. In support of his contention, the learned counsel appearing for the Insurance Company relied upon the decision reported in 2007 (2) TN MAC 249 (Selvaraj vs. S.Ramesh and National Insurance Co. Ltd. Sankagiri) and 2013 (1) TN MAC 801 (SC) (V.Sudha vs. P.Ganapathi Bhat and another).

5. In the decision of the Hon'ble Supreme Court, reported in 2013 (1) TN MAC 801 (SC) (cited supra), the disability has been assessed in respect of each and every part of the body and if the percentage of disability is calculated with reference to the whole body, the disability would be something less/something else.

6. It is relevant to point out that even though the percentage of disablement has been assessed at 70% by the Doctor, the Tribunal has taken the percentage of disablement at 25% only, because, the disability spoken to by the Doctor is not with reference to the whole body. It is essential to point out two critical component of the disablement, as discussed by the Tribunal.

i) The Tribunal has extensively dealt with the details of the injury suffered and it read as as under:

"The Doctor P.W.2. Dr.Thiyagrajan has stated in his proof affidavit that he examined the petitioner clinically and on the basis of Discharge Summary and assessed the disability of the petitioner and found it to be 70% partial permanent for the injuries, viz., head injury EDH Contusion Brain, CTB, Fracture of Left Occipital Temporal bone left, EDH contusion brain, left ear bleeding and left VI, VII nerve Palsy. The difficulties arise out of the injuries are post traumatic head ache, giddiness, tremors right hand and leg, cannot carry head loads, for this 30%, left ear, T.M.Sear, watering from left ear, for this 10%. Left VI examinal, nerve palsy medical deviation eye for this 15%, and left facial palsy VII nerve palsy left facial muscle residual palsy cannot close for this 15%, in total, 70% disability. It is supported by Ex.P7 Disability Certificate. The disability criticism by the respondent also taken into consideration. The P.W.2 was not a treating doctor and he has not calculated the disability in whole body percentage with working sheet. This is taken into consideration."

From the nature of injuries suffered, i.e. fracture of left occipital temporal bone and left VI, VII nerve palsy, watering from left ear, medial deviation eye, facial palsy, VII nerve palsy, left facial muscle residual palsy, etc., one can easily understand that these injuries would certainly lead to loss of earning capacity as the consequences complaint of is headache, giddiness and tremors in the right hand and leg.

(ii) The second aspect is that the short fall in the evaluation of the disability as discussed in the National Seminar on Disability Evaluation and Dissemination has been taken into account, which reads as under:

"Lacunae in the present methods of Disability Evaluation

1) Disability is not purely a medical condition. It involves Physical, Social, Psychological and Vocational impairments. At present evaluation of disability is done by the medical doctor who is specialized to evaluate only the medical aspect of disability, i.e. physical impairment.

2) Social, Psychological and Vocational activities/potentials are never considered while giving the disability assessment certificates. Hence, the present system of issuing disability evaluation certificate is defective. This is taken into consideration."

6.1. If these aspects are taken into account, then, the Tribunal is perfectly justified in adopting multiplier method of quantification, while assessing loss of earning capacity.

7. The contention of the claimant is that the percentage of disability should have been taken at 70% and not 25% and if that is taken into account, the compensation would be more.

7.1. Needless to repeat the reason as to why the Tribunal has taken the percentage of disability at 25% as this issue has been already answered in the appeal filed by the Insurance Company.

8. In the result, both the appeals are dismissed, confirming the award dated 23.04.2015 passed in M.A.C.T.O.P.No.5783 of 2011 by the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai.

9. The Insurance Company shall deposit the entire award amount, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The VI Judge

The Motor Accident Claims Tribunal

(Court of Small Causes),

Chennai.

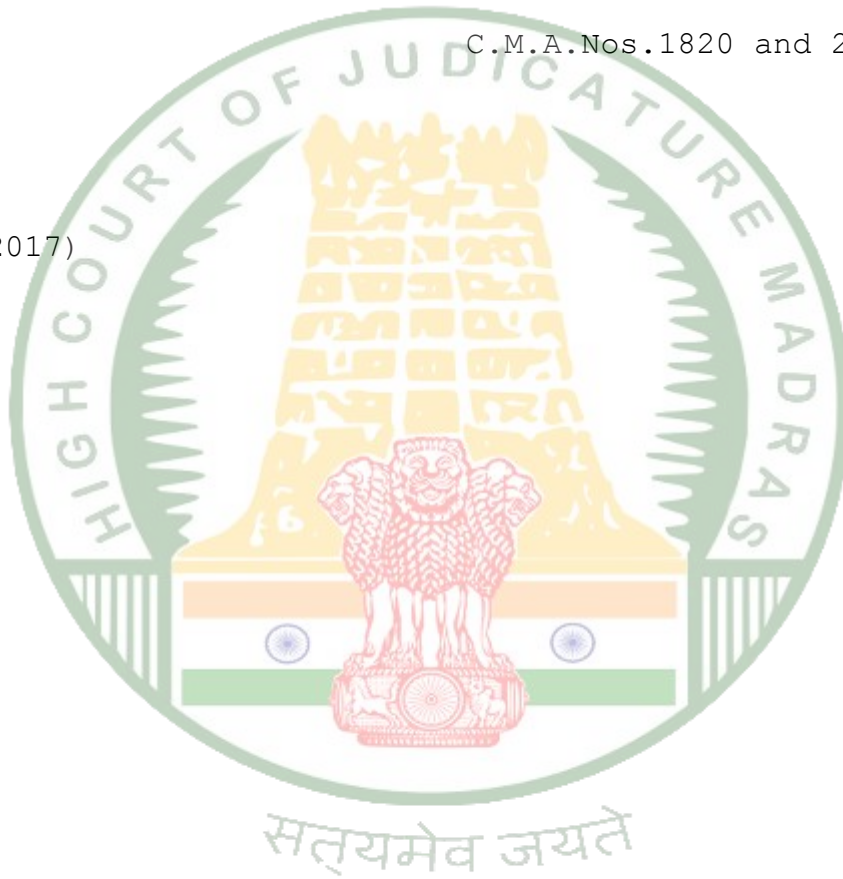
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+2 Ccs to Mr.M. Malar, Advocate sr 75916 & 75917.

+2 Ccs to Mr.Srinivasan Ramalingam, Advocate sr 75926 & 75927

C.M.A.Nos.1820 and 2589 of 2016

SKS (CO)
sp(28/09/2017)



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