

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2565 of 2016

N.Venkatachalam

... Appellant/Petitioner

versus

1. D.Vijayakumar

2. C.Prema

3. The New India Assurance Co. Ltd.

43/A, Juman Centre,

Promenade Road,

Cantonment, Trichy - 620 001.

... Respondents / Respondents

(R1 and R2 remained ex parte
before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2006, made in M.C.O.P.No.63 of 2005 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.Gunalan

For R1 and R2 : Ex parte

For R3 : Mr.N.Vijayaraghavan

JUDGMENT

N.Venkatachalam, the claimant, aged about 50 years, an Agriculturist, a power loom owner and doing milk business, earning a sum of Rs.10,000/- per month, met with an accident on 01.12.2004 and sustained grievous injuries. Hence, he filed a claim petition in M.C.O.P.No.63 of 2005 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Coimbatore, claiming compensation of Rs.9,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.3,10,600/- as compensation, payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of compensation read as under:

Medical expenses	-	Rs.1,60,000/-
Transport Expenses	-	Rs. 600/-
Permanent disablement	-	Rs. 50,000/-
Pain and sufferings	-	Rs. 30,000/-
Loss of income during		

treatment period	-	Rs. 20,000/-
Loss of future income	-	Rs. 50,000/-
Total	-	<u>Rs.3,10,600/-</u>

1.2. Challenging the quantum of compensation as inadequate, the claimant has filed the present Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The learned counsel appearing for the appellant submitted that even though the injured had taken effective treatment, his right leg below the knee was amputated, due to which, he could not be able to do his work as before and he lost his entire earning capacity; hence, the compensation towards loss of earning capacity should be awarded. Though the injured has produced the medical bill to prove the expenses to the tune of Rs.2,44,892/- and Rs.1,00,000/- towards future medical expenses, the Tribunal has awarded only a sum of Rs.1,60,000/-, which is unjust. The Tribunal ought to have awarded compensation towards loss of enjoyment of amenities, attendant charges, nutrition. Hence, the compensation has to be enhanced, is the contention of the appellant.

3. The learned counsel appearing for the Insurance Company has submitted that the award is justifiable.

4. Due to the accident, the claimant has suffered fracture of bones over the knee in the thigh portion and below the knee over the tibia portion; in both places, implant has been made during surgery. At the later point of time, the implant has been removed. As there was no cure below the knee, amputation has been done on 13.01.2005. Plastic surgery has been performed.

4.1. Considering the nature of the injuries and amputation of right leg below the knee, the Tribunal has fixed the disability only at 50%.

4.2. The Tribunal has given the following reasons to reject the medical bills:

a) Medicines have been purchased without prescription

This reasoning cannot be accepted as there is a possibility of purchasing medicine with prescription and later, the prescription having been found missing or lost. Vexed over going to hospital, the claimant would have chosen to purchase medicines without prescription.

b) The Tribunal has given a finding that the expenditure is extra, in the sense that the spending is luxurious. When the claimant was in a pitiable position of being at the mercy of the hospital, he cannot dictate terms regarding medical expenses. The claimant is in a vulnerable position in a

hospital and not in a vantage position. Therefore, rejecting the medical bills on the ground that the bill is excessive, without giving reasons and basis, is unsustainable.

4.3. The claimant has produced necessary bills for medical expenses, i.e. Exs.P10, P11, P13, P15 and P15, for a sum of Rs.2,44,892/-. But, the Tribunal has awarded only a sum of Rs.1,60,000/- (including the future medical expenses), which is not correct. Once the claimant has produced the proof to show the expenses incurred by him, it has to be reimbursed. Hence, the medical expenses as per the bills has to be enhanced from Rs.1,60,000/- to Rs.2,44,892/-.

5. Contention has been raised that three surgeries underwent by the claimant is unnecessary. Nobody would be inclined to suffer the pain of surgery unless it is necessary. For the sake of getting money, nobody would undergo a surgery. Therefore, unless there is expert opinion justifying that the operation suggested was totally unnecessary, the contention that the surgery is unwarranted, cannot be accepted.

6. Taking the modest estimate of Rs.4,250/- as monthly income (though claimed at Rs.10,000/-) and adopting the multiplier of '13', fixing the percentage of loss of earning capacity at 60%, the loss of earning capacity would be Rs.3,97,800/- (Rs.4,250/- x 12 x 60/100 x 13). Even though the percentage of disability is fixed at 50%, the loss of earning capacity would be 100%, having regard to age and nature of job. However, some part of the work like billing can be done by sitting at home. Therefore, the percentage of loss of earning capacity is taken at 60%.

7. Having regard to the amputation of leg, period of treatment and number of surgeries, the award has to be restructured:

Medical expneses	-	Rs. 2,44,892/-
Transportation	-	Rs. 10,000/-
Extra nourishment	-	Rs. 20,000/-
Attendant charges	-	Rs. 20,000/-
Loss of enjoyment of amenities	-	Rs. 50,000/-
Loss of earning capacity	-	Rs. 3,97,800/-
Pain and suffering	-	Rs. 50,000/-
Total	-	Rs. 7,92,692/-
Rounded off	-	Rs. 7,92,700/-

8. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.3,10,600/- to Rs.7,92,700/-.

9. The Insurance Company is directed to deposit the enhanced compensation of Rs.7,92,700/- less the amount already deposited in 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. The claimant shall pay necessary court fee for the enhanced amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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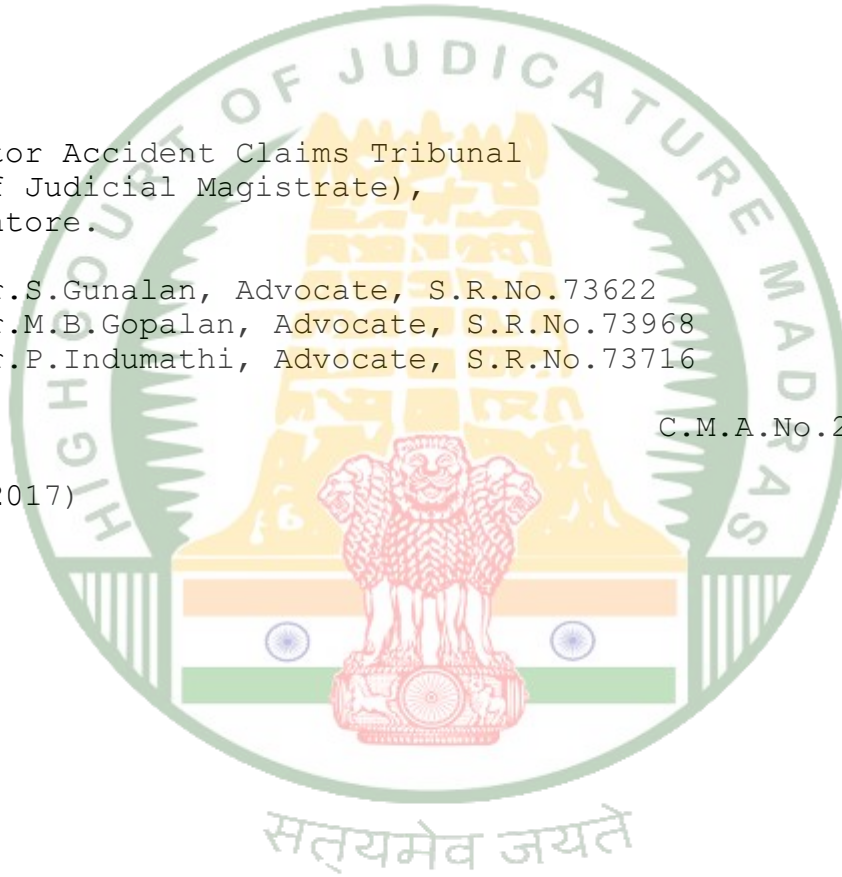
To

1. The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Coimbatore.

+1cc to Mr.S.Gunalan, Advocate, S.R.No.73622
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.73968
+1cc to Mr.P.Indumathi, Advocate, S.R.No.73716

C.M.A.No.2565 of 2016

GP(CO)
GN(13/10/2017)



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