

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

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THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. No.870 of 2016

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C.M.P. No. 7025 of 2016

M/s United India Insurance Co. Ltd.,
No.134, Greams Road
Chennai 600 006 ..Appellant/2nd Respondent

Vs.

1. P.Murugesan ..1st Respondent/Petitioner
2. Pushpalatha ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the Judgment and decree dated 22.08.2014 made in M.C.O.P. No.2694 of 2012 on the file of Motor Accidents Claims Tribunal (V Judge), Court of Small Causes, Chennai.

For Appellant :: Mr.J.Chandran

For Claimant/R1:: Mr.K.Varadha Kamaraj

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Insurance Company as against the judgment and decree dated 22.08.2014 made in M.C.O.P. No.2694 of 2012 on the file of Motor Accidents Claims Tribunal (V Judge), Court of Small Causes, Chennai.

2. On 31.05.2012 at about 16.00 hours when the claimant was riding his motorcycle bearing Registration No.TN-04-1026 at G.A.Road and Nagamani Hospital (near) Tondiarpet, proceeding from South to North direction, an auto bearing Registration No.TN-03-D-5700 came from North to South direction in a rash and negligent manner, hit the claimant's motorcycle, thereby he sustained grievous injuries. Claiming compensation to the tune of Rs.6,00,000/- the claimant approached the Tribunal by filing M.C.O.P.No.2694 of 2012.

4. The Tribunal based on the oral evidence of the witnesses, and the documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income for 6 months	Rs.39,000/-
2	Extra Nourishment transportation, damage to clothes	Rs.25,000/-
3	Attender charges	Rs. 3,000/-
4	Medical expenses	Rs.1,31,000/-
5	Future Medical expenses	Rs. 60,000/-
6	Pain and suffering	Rs. 25,000/-
7	Disability of 35% at the rate of Rs.2,000/- per percentage	Rs. 70,000/-
8	Loss of amenities	Rs. 25,000/-
9	Loss of earning capacity	Rs.1,17,000/-
	Total	Rs.4,95,000/-

Aggrieved over the said award, the Insurance Company has come forward with this appeal.

5. Heard the learned counsel for the appellant and the learned counsel who took notice for the claimant.

6. In an accident that took place on 31.05.2012, a 37 year old man doing Soda Business and Real Estate, sustained injuries viz., fracture in right tibia with crush injury right foot. The Doctor assessed disability at 50%. The Tribunal, after considering the evidence on record and also taking note of the evidence of the P.W. 2 Doctor and scrutinizing all the exhibits viz., Exs.P1 to P 18, came to the conclusion that the claimant would be entitled to a compensation of a sum of Rs.4,95,000/-, which according to the appellant is excessive.

7. The Tribunal has granted compensation of a sum of Rs.4,95,000/- under various heads as referred to above. A glance of the award would go to show that the Tribunal has granted compensation for the loss of income and also for the percentage of disability. When the amounts have been granted under these two heads, the compensation granted under the head loss of earning capacity, cannot be justified. However, taking note of the nature of the injuries discussed by the Tribunal, this Court is of the view that the percentage of disability can be fixed at 40% and a sum of Rs.3,000/- per percentage be

granted as per the dictum laid by the Hon'ble Supreme Court. This Court is also of the view that all other amounts granted by the Tribunal under all other heads are reasonable except for attender charges, which is very low and for future medical expenses, which may be reduced. Accordingly, a sum of Rs.10,000/- is granted under the heading "for attender charges" and considering the injury sustained, for future medical expenses, a sum of Rs.45,000/- is granted. That apart, the percentage of interest granted by the Tribunal is also confirmed.

8. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.39,000/-	Rs.39,000/-
2	Extra Nourishment, Transportation, damage to clothes	Rs.25,000/-	Rs. 25,000/-
3	Attender charges	Rs. 3,000/-	Rs 10,000/-
4	Medical expenses	Rs.1,31,000/-	Rs.1,31,000/-
5	Future Medical expenses	Rs. 60,000/-	Rs. 45,000/-
6	Pain and suffering	Rs. 25,000/-	Rs. 25,000/-
7	Disability	Rs. 70,000/- (35% x 2000)	Rs.1,20,000 (40% x 3000)
8	Loss of amenities	Rs.25,000/-	Rs. 25,000/-
9	Loss of earning capacity	Rs.1,17,000/-	-----
	Total	Rs.4,95,000/-	Rs.4,20,000/-

8. The Appellant Insurance Company is directed to deposit the entire award amount now granted by this Court together with proportionate costs and interest @ 7.5% per annum from the date of claim petition, to the credit of M.C.O.P.No.2694 of 2012 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, if not already deposited within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the respondent /claimant is entitled to make necessary application to withdraw the same. The excess amount, if any, lying in deposit if already deposited shall be refunded to the Insurance Company. It is made clear that excess Court fee paid if any shall also be refunded.

9. The Civil Miscellaneous Appeal is disposed of on the above terms. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal (V Judge), Court of Small Causes, Chennai.

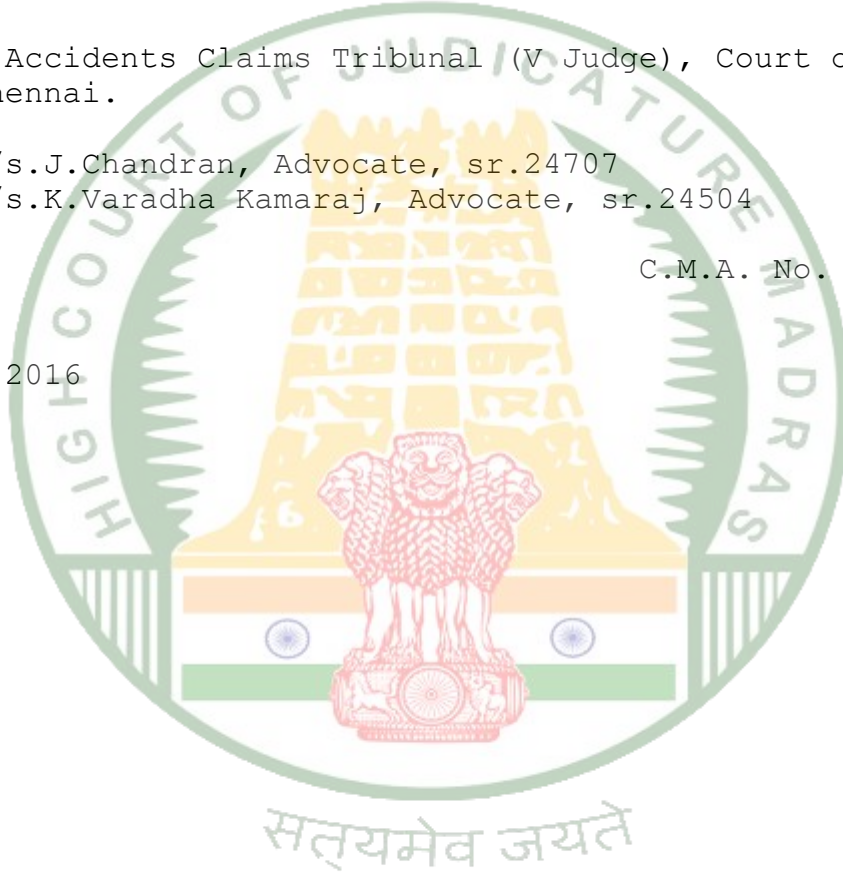
1 cc to M/s.J.Chandran, Advocate, sr.24707

1 cc to M/s.K.Varadha Kamaraj, Advocate, sr.24504

C.M.A. No. 870 of 2016

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kra 03.06.2016



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