

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1260 of 2016
and C.M.P.No.9608 of 2016

The New India Assurance Company Ltd.,
No.77, 1st Avenue, Indira Nagar, Adyar,
Chennai - 600 020 ... Appellant / 2nd Respondent

...Vs...

1. Mrs. W.Geetha Diamond, ...1st Respondent/Claimants
2. M.Vasan ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 07.07.2015, made in MACTOP No.4417 of 2010 on the file of the Special Sub Judge No.II, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr. P.G.Padmabhan
For Respondents : Mr. V.S.Suresh, for, Mr.V.Ragupathy, for R-1,
Exparte, R-2

J U D G M E N T

This Appeal filed by the Insurance Company, challenging the quantum of compensation awarded by the Claims Tribunal.

1.2. The claimant, who was a Post Graduate Teacher in Mathematics, and also the Headmistress of the Government Girls Higher Secondary School, Ashok Nagar, Chennai, earning a sum of Rs.34,021/- per month, aged 48 years, met with a road accident on 25.06.2010. The Tribunal has quantified the compensation at Rs.8,00,000/- under the following break-up details:-

S.No.	Head	Amount awarded by the Tribunal
1.	For 45% partial and permanent disability	Rs.1,35,000/-
2.	Pain and sufferings	Rs. 75,000/-
3.	Transportation charges	Rs. 10,000/-
4.	Extra nourishment	Rs. 10,000/-
5.	Cost of Attender	Rs. 10,000/-

S.No.	Head	Amount awarded by the Tribunal
6.	Loss of leave for 6 months rounded to	Rs.2,00,000/-
7.	Loss of future prospects	Rs. 60,000/-
8.	Loss of amenities	Rs. 75,000/-
9.	Medical expenditures	Rs.2,00,000/-
10.	Future Medical expenses	Rs. 25,000/-
	Total	Rs.8,00,000/-

2. The learned counsel for the appellant / Insurance Company would submit that the amount of compensation awarded towards pain and sufferings, loss of future prospects and loss of amenities of life are on the higher side and needs proportionate deduction.

3. In order to appreciate the said contention, it is necessary to look into the details of injuries suffered by the claimant. The claimant / first respondent herein has sustained fracture of left thigh bone, radius bone on her left hand, bone on her left eyebrow and multiple injuries all over the body due to the accident. In Medical terms, the diagnoses reads as under:-

- "1. Grade III B Compound fracture middle 1/3 and lower 1/3 junction left femur.
2. Left distal radius fracture.
3. Fracture superior orbit rim left."

4. From the procedure adopted, it is evident that the skin grafting for the left thigh has been done to the claimant.

5. P.W.3, Dr.Mathiazhagan, has been examined to speak about the permanent disablement of the claimant. The disability of 60% assessed refers to different percentage of disability for different parts of the body (30% disability on the hip, 10% disability on the face and 20% disability on the wrist). The fracture on the thigh as well as in the hand simultaneously should have created lot of pain and sufferings, especially when the claimant has been treated as inpatient continuously for a period of 25 days. Therefore, the amount of compensation awarded for pain and sufferings and loss of enjoyment of amenities cannot be said to be excessive.

6. Having regard to the nature of job, the Tribunal did not adopt the multiplier method of quantification for loss of earning capacity. But it has awarded disablement compensation.

6.1. The diminishing value in the saleability of the injured

in the employment market ought to have been considered by the Tribunal. But it has not been done so. It is relevant to quote the decision in the case of Arvinder Singh Son Of Raghbir vs Rajinder Kumar Son Of Mehanga Ram, on 10 January, 2013, where- under it has been held as follows:-

"2. I find the compensation awarded to be wholly inadequate and improper where, an accident results in privation of an organ and loss of amenity is not the only head, which the Court should address but it must have been taken as causing loss of earning capacity as well. It is a "schedule injury" under the Workmen Compensation Act and the compensation has to be assessed from the point of view of how his own saleability in a job market is diminished by such a disability. The retention in job of an employee after such disability is not a defence for an insurer or a tortfeasor. This issue has been answered in several judgments of various High Courts and this Court has also had an occasion to deal with the same issue in FAO No.3432 of 2009 titled New India Assurance Co. Ltd. v. Smt. Santosh Devi and others on 29.09.2010, vide paras 19 and 20. I would, therefore, find that the compensation has to be worked out first by taking the average income and applying percentage of loss of earning capacity."

7. Therefore, Civil Miscellaneous Appeal has no merits and hence, this Civil Miscellaneous Appeal is dismissed.

8. The amount of compensation, as ordered by the Claims Tribunal, shall be deposited by the appellant / Insurance Company, less the amount already deposited along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. There is no liability to pay interest, if any, in respect of the period during which there had been delay in respect of which, condonation of delay has been ordered, subject to waiver of interest. On such deposit being made, the claimant / first respondent herein is permitted to withdraw the entire amount of compensation. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
Special Sub Judge No.II,
Chennai

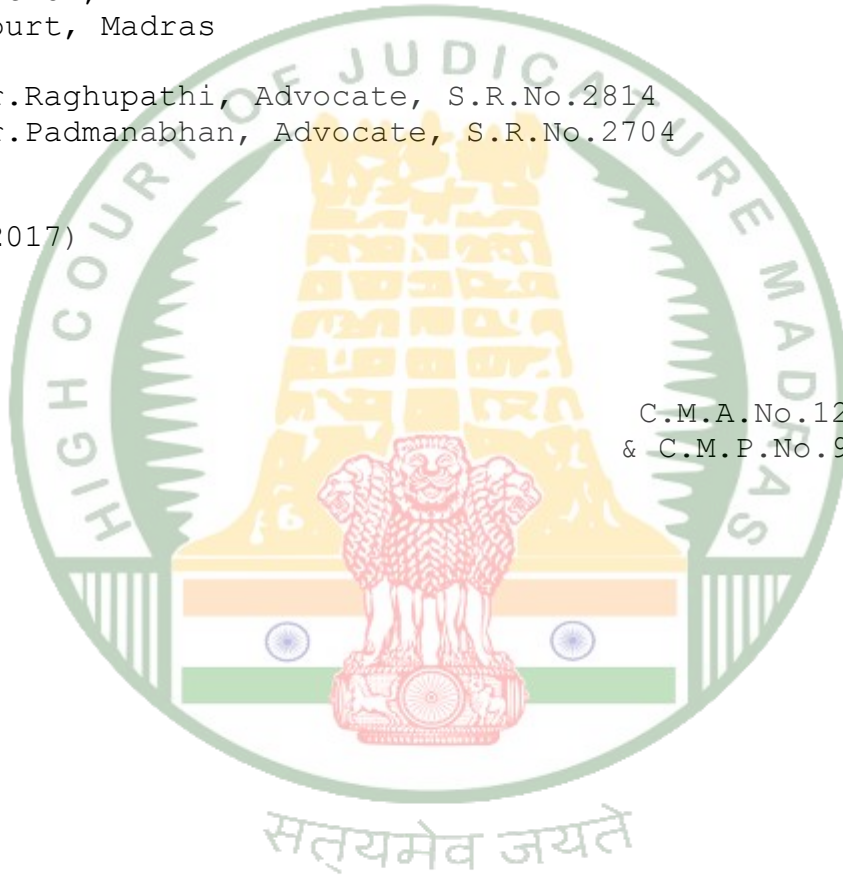
2. The Section Officer,
V.R.Section,
High Court, Madras

+1cc to Mr.Raghupathi, Advocate, S.R.No.2814

+1cc to Mr.Padmanabhan, Advocate, S.R.No.2704

SKS (CO)
RS (23/03/2017)

C.M.A.No.1260 of 2016
& C.M.P.No.9608 of 2016



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