

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.1821 of 2011

and

CMP No.15480 of 2017

M.Senthilkumar

... Appellant

Versus

1. M/s.Vijay Agencies
No.18, Thiruvalluvar Salai,
Teynampet,
Chennai – 18.

2. The United India Insurance Co. Ltd.
No.134, Greams Road,
Silingi Building, HUB, V – Floor,
Chennai – 6.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P. No.652/01, dated 25.07.2006 on the file of the II – Small Causes Court, Chennai / Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.K.R.Ponnusamy

For Respondents : R1- Exparte

Mr.D.Bhaskaran for R2.

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JUDGMENT

The appeal is filed by the claimant seeking enhancement of compensation.

2. The claimant, Senthilkumar, aged 19, Helper in a Tinkering workshop,

earning a sum of Rs.3,000/-p.m., met with an accident on 21.12.2000. According to him, he suffered not only head injury but spine injury and multiple injuries all over the body leading to total incapacity to work. He claimed a sum of Rs.5,00,000/- as compensation before the Tribunal.

3. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.2,05,000/-, payable with interest at 7.5% p.a. from the date of petition till the date of deposit, the break-up details of which are as hereunder :-

Loss of earning capacity	:	Rs.1,00,000/-
Disability @ 75%	:	Rs. 75,000/-
Pain & Suffering	:	Rs. 15,000/-
Extra Nourishment	:	Rs. 5,000/-
Medical expenses	:	Rs. 10,000/-
Total	:	Rs. 2,05,000/-

Alleging that the award passed by the Tribunal is inadequate, the claimant has filed this appeal.

4. The Tribunal has made a very critical observation regarding the stage, at which the claimant appeared before the Court to give the evidence. The Tribunal has taken note of the following facts 1) the claimant suffered head injury at the time of accident and (2) the Doctor has also stated that there was bleeding in the brain and therefore, contusion in the brain that made him to suffer immobilisation of many limbs in the entire body. There was also a scar, disclosing the portion of the affected portion of the head. Yet another important

observation is that, though the claimant was found to be stable, however, the claimant was not in a position to stand for a long time. There was loss of muscles as well as slurring in the speech. The Doctor has assessed the disability at 85%.

5. To substantiate the averments in this appeal, CMP No. 12588 of 2016 and CMP No. 15480 of 2017 have been filed to receive the additional documents relating to the treatment undergone by the claimant. The documents sought to be marked are prescriptions and medical bills. The prescriptions have been issued by the Neuro surgeon indicating the consequences of the head injury. Having regard to the nature of documents sought to be marked, CMP Nos. 12588 of 2016 and CMP No. 15480 of 2017 are ordered.

6. From the documents available on record, it is evident that there is immobilisation of both legs and both the hands. The Tribunal has concurred with the evidence of the Doctor that there is no possibility of the claimant to do any physical work on account of injuries sustained. Based on the injuries suffered by the claimant, the Tribunal quantified the compensation under the head loss of earning capacity at Rs.1,00,000/-; Extra nourishment at Rs.5,000/-; pain and sufferings at Rs.15,000/-. For disablement Rs.75,000/-. In all, a total compensation of Rs.2,05,000/- has been awarded.

7. The learned counsel for the appellant submits that even as of now the condition of the appellant has not improved in any way and the physical

incapacity which was the outcome of the accident, at the time of the accident continues and the physical condition of the claimant is worsening day by day which could be revealed from the prescriptions and medical bills that are sought to be produced before this Court. The recent photograph has also been produced before this Court. The learned counsel for the appellant has submitted that even today, the appellant has come to Court, but due to difficulty in climbing, he is unable to appear before this Court, and he is available in the ground floor.

8. Even after 17 years of the accident, the records produced reveal that the possibility of the claimant to do any physical work is remote. In such circumstances, this Court is of the view the loss of earning capacity should have been quantified by adopting the multiplier method.

9. Considering the inflation rate and the reduction in the value of money, even though it is claimed in the claim petition that the claimant was earning a monthly income of Rs.3,000/- at the time of accident, the value of money as on date is calculated to assess the loss of earning capacity. This Court, assessing the disability at 50% and fixing the monthly income at Rs.3,000/- and adding 50% towards future prospective increase in income and adopting multiplier of 18, the loss of earning capacity is assessed at 4,86,000/- (4,500 X 12 X 18).

11. Insofar as the other heads are concerned, a perusal of the compensation awarded reveals that the same is not commensurate with the injuries sustained nor the treatment taken and the impact of the injuries on the

claimant. Accordingly, this Court is of the opinion that the compensation awarded under the other heads needs to be enhanced. Accordingly, the compensation awarded under the various heads, as quantified by this Court are as hereunder :-

Sl. No.	Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
1	Loss of earning capacity	1,00,000/-	4,86,000/- (4500 x 12 x 18 x 50%)
2	Disability @ 75%	75,000/-	-
3	Pain and suffering	15,000/-	50,000/-
4	Extra Nourishment	5,000/-	10,000/-
5	Medical expenses	10,000/-	1,50,000/-
6	Future Medical Expenses	-	50,000/-
7	Transport to Hospital	-	10,000/-
8	Attendant charges	-	25,000/-
9	Loss of marital prospects	-	75,000/-
10	Loss of enjoyment amenities	-	50,000/-
	Total	2,05,000/-	9,06,000/-

12. The Tribunal has not awarded compensation towards Transport to hospital, accordingly it is awarded at Rs.10,000/-. Amount awarded under the head extra nourishment is now enhanced to Rs.10,000/- and loss of enjoyment amenities is awarded at Rs.50,000/-. Considering the physical incapacity on account of the disablement in the hand as well as in the leg, the cost of attendant has to be calculated for the loss of use of limb. Therefore, attendant

charges for the disablement caused is awarded at Rs.25,000/- The total amount of compensation is awarded at Rs.9,06,000/-

13. Accordingly, this appeal is allowed enhancing the compensation from Rs.2,05,000/- to Rs.9,06,000/- payable with interest at 7.5% p.a. from the date of petition till the date of deposit, excluding interest for the default period. However, it is made clear that the compensation of Rs.50,000/- awarded towards future medical expenses will not carry interest for the entire period. No costs.

14. The insurance company is directed to deposit the compensation amount as enhanced by this Court above, along with interest at the rate of 7.5% p.a., except for Rs.50,000/- less the amount, if any, already deposited, from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. Registry is directed to see that the court fee due, payable by the claimant on the enhanced compensation is paid before copy of the judgment is issued to the learned counsel for the claimant.

18.09.2017

Index : Yes/No
Internet: Yes/No
Speaking / Non speaking
vsi2

List of documents : On the side of the appellants / claimants :-

S. No.	Exhibit	Details
1	Ex. A- 1	CT Scan (Brain)
2	Ex. A- 2	Discharge summary
3	Ex. A- 3	Continuous treatment record
4	Ex. A- 4	Medical bills

To

1) The Judge, Court of Small Causes,
Chennai / Motor Accident Claims Tribunal
Chennai.

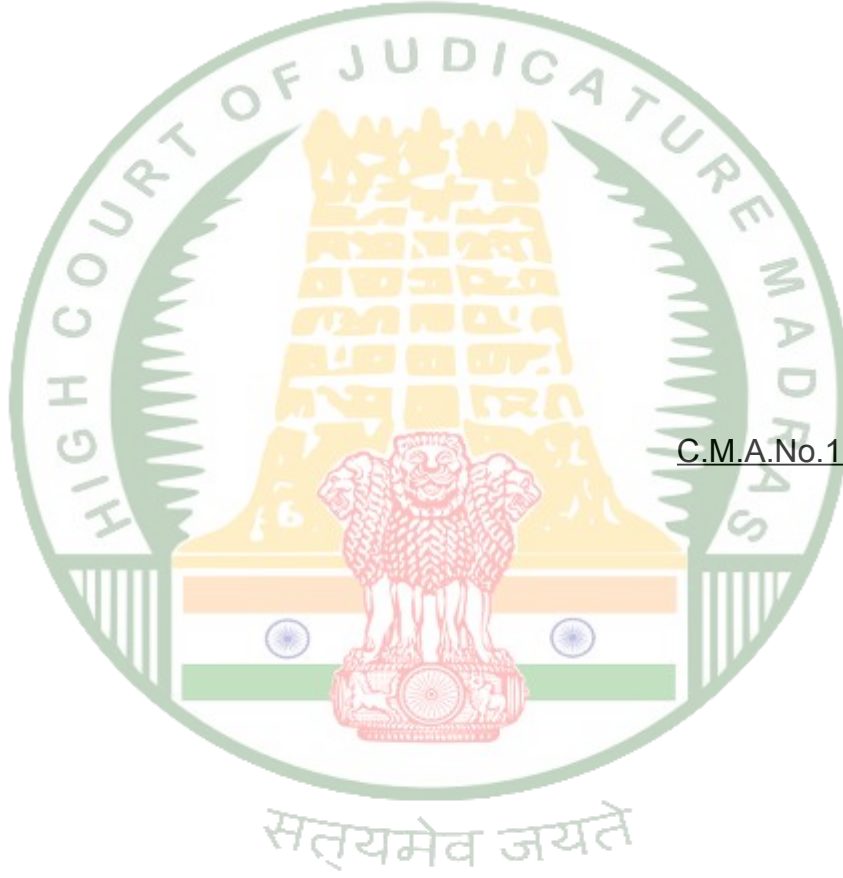
2. The Section Officer,
V.R. Section,
High Court, Madras – 104.



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Dr.S.VIMALA, J.

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