

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2208 of 2015

M/s. United India Insurance Co. Ltd.,
Having its Office at,
No.235 Gandhi Market Road,
Arni,
Tiruvannamalai District. ... Appellant/2nd Respondent

..vs..

1. Mr. C.Madavan
2. Mr. R.Manikavelu ... Respondents/Petitioner/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the Judgment and Decree, dated 17.03.2014, made in
M.C.O.P.No.263 of 2008 on the file of the Motor Accident Claims
Tribunal, Arni at Tiruvannamalai District.

For Appellant : Mr. J.Chandran

For Respondents: Mr. P.Rajavelu, for R-1,
No Appearance, for R-2.

JUDGMENT

The Insurance Company has filed this Appeal, disputing the
quantum of compensation. As the existence of the policy is not
under dispute, the notice to the owner of the vehicle is
dispensed with. The quantum of compensation alone is under
challenge.

2. The claimant, C.Madavan, aged 40 years, a cement dealer,
earning a sum of Rs.30,000/- per month, suffered grievance
injuries in an accident, that took place on 13.05.2008. The
Tribunal has quantified the compensation, taking the loss of
earning capacity at 30%, fixing the monthly income at
Rs.4,500/-. The details of the award runs as under:-

Permanent disability	-	Rs.2,43,000/-
Pain and suffering	-	Rs. 10,000/-
Transport expenses	-	Rs. 5,000/-
Nourishment	-	Rs. 1,000/-
Medical expenses	-	Rs. 64,000/-

		Rs.3,23,000/-

3. The learned counsel for the claimant would argue that when there had been a permanent disablement and consequent loss of earning capacity, the loss of enjoyment of amenities of life ought to have been considered by the Tribunal and it is not done so.

3.1. The said submission is well founded, therefore, the loss of enjoyment of amenities is awarded at Rs.10,000/-.

3.2. Having regard to the nature of injuries, period of treatment and the nature of disability, the extra nourishment ordered at Rs.1,000/- is enhanced to Rs.10,000/-.

4. The main grievance of the learned counsel for the appellant is that the loss of earning capacity should not have been assessed at 30%; when the injury caused cannot result in any loss of earning capacity, especially, having regard to the nature of job that the claimant was doing, when the claimant is stated to be a cement dealer, which involves only a clerical work, the contention is that the injury sustained will not result in any loss of earning capacity and that in any event, the 30% of the loss of earning capacity fixed is excessive.

4.1. A Doctor has been examined to speak about the permanent disablement. There had been a fracture in the left hip and because of that fracture, there had been reduction in the length of the leg and therefore, the contention that it will not result in loss of earning capacity cannot be accepted. However, taking the loss of earning capacity at 24% (as decided by the Claims Tribunal) the loss of earning capacity is awarded at Rs.1,94,400/- (Rs.4,500/- x 12 x 15 x 24%). The amount awarded under other heads, i.e., pain and sufferings, Transport Expenses and Medical Expenses seem to be reasonable and therefore, the same are confirmed as such.

5. In the result, the total award of compensation is reduced from Rs.3,23,000/- to Rs.2,93,400/-. The entire award amount shall be deposited, less the amount already deposited, if any, 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. If the amount had been already deposited, the Insurance Company is entitled to get back the balance amount, after satisfying the award amount payable to the claimant. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk
To

1. Motor Accident Claims Tribunal,
Arni at Tiruvannamalai District.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104.

+lcc to Mr.P.Rajavelu, Advocate Sr.5078

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