

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1794 of 2017

K.Gayathri (minor) aged 16 years
D/o.Karunanidhi
(Minor rep.by her mother and next
friend Mrs.Rajalakshmi)
No.40/29, OSB Colony, West Tambaram,
Chennai - 600 045. .. Appellant

/Vs/

1.G.Kanaram Sowthri,
2.United India Insurance Company Ltd.,
No.134, Silingi Building,
Greens Road,Chennai - 06. .. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.08.2015 made in M.C.O.P.No.3264 of 2013 on the file of the Motor Accidents Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Ex-parte
No.1

For Respondent : Mr. A.Dhiraviyanathan
No.2

JUDGMENT

This appeal is filed by the claimant seeking enhancement

<http://www.judis.nic.in> of compensation.

2. K.Gayathri, Minor, (represented by her mother Mrs.Rajalakshmi), aged 16 years, Tailor by profession, earning a

sum of Rs.10,000/- per month, met with an accident on 17.05.2013. According to the claimant, she sustained severe head injuries, fracture of left leg, amputation of fingers in the right leg and multiple injuries all over the body.

3. The claimant filed the claim petition claiming a sum of Rs.15,00,000/- as compensation. The Tribunal, on consideration of materials placed before it, has awarded a sum of Rs.11,20,000/- with the following break-up details:

Medical Expenses	-	Rs. 43,000/-
Loss of Income for 3 months(9,000 x 3)	-	Rs. 27,000/-
Transportation	-	Rs. 5,000/-
Extra-nourishment	-	Rs. 20,000/-
Attendant Charges	-	Rs. 20,000/-
Damages to Clothes	-	Rs. 5,000/-
Loss of Future Earning Capacity	-	
(9000+4500 x 12 x 18 x 20%)	-	
= 5,83,200/- rounded to	-	Rs.6,00,000/-
Pain and sufferings	-	Rs.1,00,000/-
Loss of Amenities	-	Rs.1,00,000/-
Disfigurement of Left Leg	-	Rs.1,00,000/-
Loss of Expectation of Life (Marriage point)	-	Rs.1,00,000/-
Total		Rs.11,20,000/-

3. Challenging the award as inadequate, the claimant has

3.1. According to the learned counsel for the appellant, the Tribunal committed mistake in fixing the percentage of earning capacity as 20%, while actual loss of earning capacity is 100%. It is also pointed out that no amount has been awarded towards future medical expenses.

4. The learned counsel for the second respondent/Insurance Company would contend that it is a case, where, luxurious compensation has been awarded under each and every heads and when the claimant's age is 16, the monthly income ought not to have been fixed at Rs.10,000/- in the absence of any documentary evidence for proving the income.

5. It is contended that when there is no evidence to show that marital life is not possible, the loss of expectation of life (on the point of marriage) awarded at Rs.1,00,000/- is excessive and it requires proportionate reduction.

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5.1 In order to appreciate the contention raised on both sides, it is necessary to consider the factual details of the impugned award. According to the evidence adduced, on account of Head injuries, there is alleged loss of memory and there is headache and giddiness, thereby affecting the quality of life and the health of the claimant. It is also stated that there is difficulty in bending the left leg, there is removal of 2nd, 3rd, 4th and 5th toes and there is

difficulty in getting grip of right leg.

6. Whether this kind of disability would lead to 100% of disablement in earning capacity, as contended by the learned counsel for the claimant or 20% loss of earning capacity, as fixed by the claims Tribunal is the issue to be considered.

6.1. It is rightly pointed out that monthly income ought not to have been fixed as Rs.9,000/- in the absence of any documentary evidence, especially, when the claimant's age is only 16. Even assuming that the monthly income fixed is right, the claim of the minor claimant has been considered under each and every heads separately and even for disfigurement, a sum of Rs.1,00,000/- has been awarded. The multiplier method has been adopted not to the entire extent of the physical disablement but to the extent of functional disablement (20%), arising out of physical disablement. It is relevant to point out that loss of four toes cannot lead to total loss of earning capacity. Fixing of 20% of earning capacity is reasonable. Considering the fact that she was a minor at the time of the accident, pain and suffering has been awarded at Rs.1,00,000/-. Therefore, the contention that the quantum of compensation has not been adequately arrived at cannot be accepted.

7. The appeal has no merits and the appeal is dismissed

confirming the award passed by the Tribunal. No costs.

8. The second respondent/Insurance company is directed to deposit the entire award amount, less the amount already deposited, if any, along with accrued interest and costs as ordered by the Tribunal (less the period of delay in filing the appeal, if any) within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, since the only claimant is a minor, her share shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks till she attains majority and the mother of the minor claimant would be entitled to withdraw the interest accruing thereupon once in three months.

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Index : yes/No

Internet: Yes/No

kv/sms

To

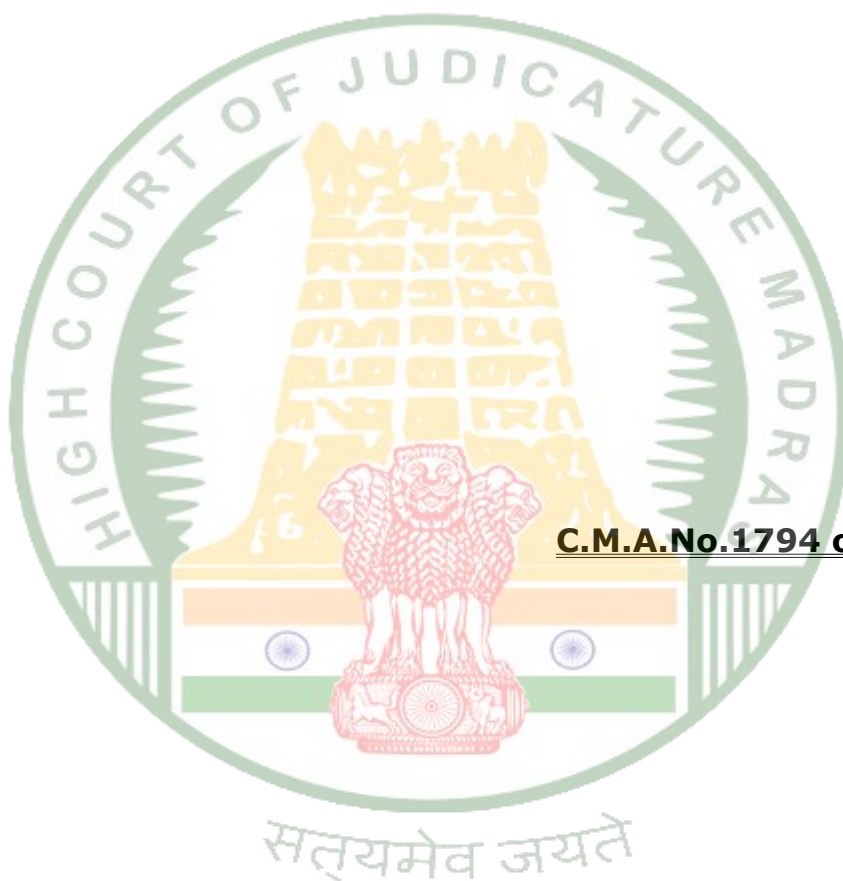
1. United India Insurance Company Ltd.,
No.134, Silingi Building,
Greaves Road, Chennai - 06.

2. The Motor Accidents Claims Tribunal,
(VI Small Causes Court), Chennai.

3. The Section Officer, VR Section,
High Court, Madras.

Dr.S.VIMALA,J.

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