

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.02.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A.No.202 of 2017

and

C.M.P.No.2191 of 2017

United India Insurance Co., Ltd.,
Branch Manager,
No.146-N, Kumar Complex,
Tiruchengode Town & Taluk,
Namakkal District.
Appellant

Vs.

1. Sridhar
2. R.K.Tube Wells,
Proprietor,
L.K.Loganathan,
No.10, SSS Building,
A.V.Road, Bangalore District,
Karnataka State.
Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.03.2010 made in M.C.O.P.No.522 of 2006 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Namakkal.

For Appellant : R.Sreevidhya

For Respondents : No appearance

J U D G M E N T

This appeal has been filed by the Appellant-Insurance Company, challenging the quantum of compensation awarded by the Tribunal.

2.The Claimant, Sridhar, aged 23 years, employed as a cleaner, earning a sum of Rs.5,000/- p.m. met with an accident on 13.04.2006 due to which he sustained grievous injuries. Hence, he filed a Claim Petition in M.C.O.P.No.522 of 2006, on the file of Motor Accident Claims Tribunal (CJM), Namakkal, claiming compensation.

3. The Claims Tribunal, on consideration of the oral and documentary evidence has awarded a sum of Rs. 7,25,300/- as compensation. The break-up details of the same are as under:-

Loss of earning capacity	- Rs.4,24,320/-
Pain and suffering	- Rs.1,00,000/-
Medical Expenses	- Rs.1,21,000/-
Transportation	- Rs. 10,000/-
Nutrition	- Rs. 10,000/-
Loss of amenities	- Rs. 10,000/-
Marital prospectus	- Rs. 50,000/-
Total	- Rs.7,25,320/-

4. The learned counsel for the appellant submits that the award passed by the Claims Tribunal is highly excessive and disproportionate. He

further submits that the Tribunal ought not to have fixed the disability at 80%, which is on the higher side.

5. A perusal of the order passed by the Tribunal reveals that even in the claim petition it is alleged that the wheels of the vehicle ran over the two legs of the claimant and therefore he suffered amputation upto his thigh level and he was in-patient from 11.04.2006 to 18.04.2006 and thereafter from 19.04.2006 till 21.05.2006. The amputation was in the right leg upto thigh level and he also suffered fracture in the left leg. It was his claim that because of the amputation, he suffered total loss of earning capacity.

6. P.W.2, Dr.Kannappan, who examined the claimant and issued the disability certificate has deposed that the crush injury and amputation suffered by the claimant, would amount to 90% disability. He has also certified that three of the injuries suffered by the claimant were grievous injuries.

7. The Tribunal, relying upon the decisions in (i) **Law Officer Vs. M.Pentaiah Chary** reported in **2009 (1) SCC (CrI) 235**, (ii) **Branch Manager, Oriental Insurance Company Ltd., Vs. Rathinasabapathi @ Sabapathi and another** reported in **2009 (2) MLJ 170**, (iii) **Tamil Nadu State Transport Corporation Limited Vs. Sagunthala** reported in **2006 (2) TN MAC 68** and (iv) **Oriental Insurance Co., Ltd., Vs. Satis Sharma and others** reported in **2009 ACJ 2259**, while fixed the monthly income of

the claimant at Rs.3,900/-, adopting multiplier method for quantifying the compensation under the head Loss of Earning Capacity and awarded a sum of Rs.4,24,320/-.

8. A perusal of the injuries sustained by the claimant, as also the evidence of the Doctor, who issued the disability certificate coupled with the nature of disability suffered by the claimant, the adoption of multiplier method for quantifying the compensation cannot be said to be erroneous. Further, the Tribunal has adopted the correct multiplier and fixed the functional disability at 80%, though the Doctor has assessed the disability at 90% and has properly quantified the compensation, which cannot be said to be excessive. Further, it is to be pointed out that while quantifying the compensation, the Tribunal has not taken into consideration the future prospective increase in income of the claimant. Therefore, the compensation awarded under the head loss of earning capacity cannot be said to be excessive and, accordingly, the same is confirmed.

9. Insofar as the compensation awarded under the other heads are concerned, a perusal of the injuries sustained by the claimant, the period of treatment and the impact of the disability and the suffering undergone by the claimant would justify the compensation awarded under the various other heads. The compensation under those heads cannot be said to be excessive and, accordingly the same are confirmed.

10. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree of the Claims Tribunal, dated 25.03.2010, in M.C.O.P.No.522 of 2006. No costs. Consequently, connected miscellaneous petition is closed.

11. The Insurance Company is directed to deposit the compensation amount along with interests and costs as awarded by the Tribunal, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. 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.

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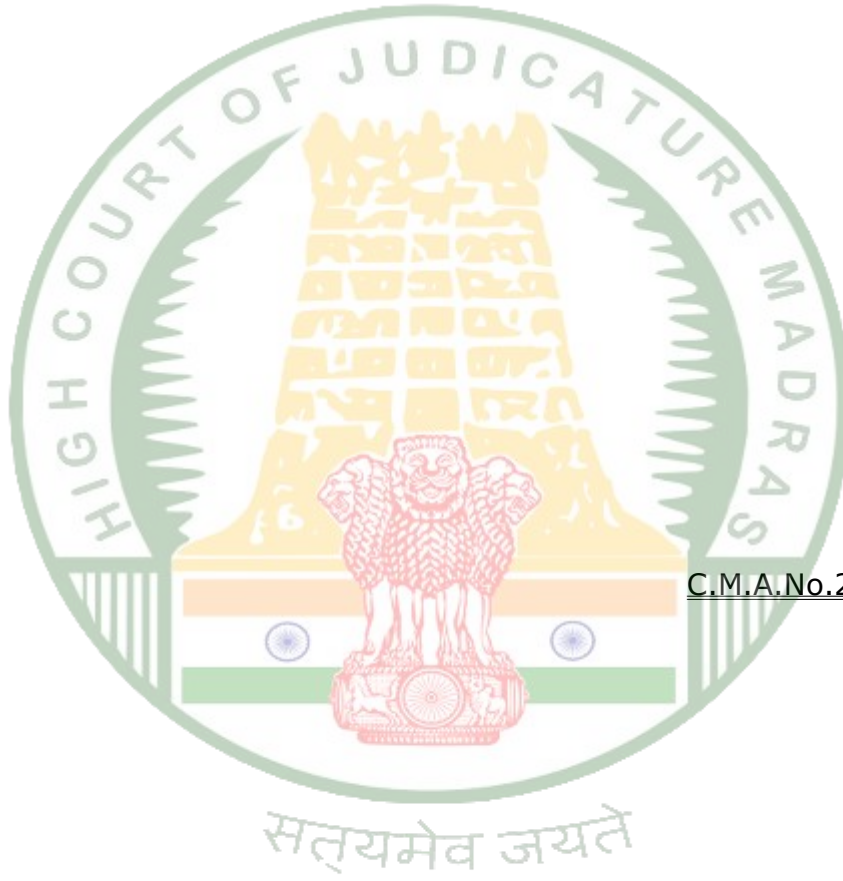
arr/GLN

To:

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Namakkal.
2. The Section Officer,
V.R.Section, High Court,
Madras – 104.

DR.S.VIMALA, J.,

arr/GLN



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