

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.3210 of 2014

and M.P.No.1 of 2014

United India Insurance Co. Ltd.,  
Giriram Complex,  
Saathi Main Road,  
Gobichettipalayam,  
Gobichettipalayam Taluk,  
Erode District. ....3<sup>rd</sup> respondent / Appellant

versus

1. K.Mahalingam .... Claimant / 1<sup>st</sup> respondent  
2. Rangasamy .... 1<sup>st</sup> respondent / 2<sup>nd</sup> respondent  
3. Indirani .... 2<sup>nd</sup> respondent/3<sup>rd</sup> respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 30.11.2006 made in M.C.O.P.No.77 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani.

For Appellant : Mr.S.Arun Kumar  
For R1 : Mr.V.Ayyadurai  
For R3 : Mr.Ma.Pa.Thangavel  
For R2 : No appearance

JUDGMENT

One Mahalingam, aged 32 years during 2004, doing agricultural work, earning a sum of Rs.4,000/- p.m., met with an accident on 10.11.2004 and sustained 100% disablement. Hence, he filed a claim petition in M.C.O.P.No.77 of 2005 before the Motor Accidents Claims Tribunal, Sub Court, Bhavani, claiming compensation of Rs.10,00,000/-.

2. As against the claim made, the Tribunal has awarded a sum of Rs.13,00,650/- as compensation with the following break-up details.

|                                           |   |                |
|-------------------------------------------|---|----------------|
| Loss of earnings and permanent disability | - | Rs. 6,12,000/- |
| Medical expenses                          | - | Rs. 1,03,652/- |
| Future Medical expenses                   | - | Rs. 5,00,000/- |
| Pain and sufferings                       | - | Rs. 1,00,000/- |
| Transport expenses                        | - | Rs. 25,000/-   |
| Extra nourishment                         | - | Rs. 50,000/-   |
| Total                                     | - | Rs.13,00,652/- |
| Rounded off                               | - | Rs.13,00,650/- |
| Rounded off                               | - | Rs.13,00,650/- |

Taking the monthly income of the injured at Rs.3000/-, adopting the multiplier of '17' and fixing the disability at 100%, the Loss of earning capacity has been calculated at Rs.6,12,000/- and the total award is Rs.13,00,650/- . This award is under challenge by the Insurance Company.

3. The learned counsel appearing for the appellant-Insurance Company would submit that when the claim amount is Rs.10,00,000/-, the award of Rs.13,00,650/- is unjustified and especially, the loss of earning capacity assessed at 100% is incorrect.

4. From the evidence given by the Doctor, it is evident that because of fracture in the backbone, the petitioner has lost the activities in both legs and therefore, he has to depend upon any one of his family members and thus, the earning capacity assessed at 100% is justified - this is the contention of the learned counsel for the claimant.

5. Yet another contention taken by the Insurance Company is that the Tribunal committed an error in not deducting 1/3<sup>rd</sup> towards personal expenses while calculating the compensation towards loss of earning capacity or disability. This contention is raised without understanding the basic principles involved while quantifying the compensation. While assessing the loss on account of death, the contribution of the deceased towards the family is calculated by adopting the method of calculating his total income and deducting the amount, which the deceased would have been spent on himself, while he had been alive. Thus, it is the exact loss of income that is sought to be compensated.

5.1. The deduction of 1/3<sup>rd</sup> towards personal expenses cannot be done in a case, where, the injured person is alive and on account of the injury, the injured is not able to earn, the loss

is suffered not only by the family members, but, by the injured himself; the injured had to spend not only for his normal living but also he had to spend additional money towards his medical expenses. Therefore, the contention of the learned counsel for the Insurance Company that 1/3<sup>rd</sup> had to be deducted from the monthly earnings of the injured cannot be sustained.

6. Insofar as the future medical expenses are concerned, because of Paraplegia suffered by the claimant, the amount of Rs.5,00,000/- had been awarded and that amount cannot be said to be excessive, having regard to the nature of the injury.

7. Hence, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 30.11.2006 passed in M.C.O.P.No.77 of 2005 by the Motor Accidents Claims Tribunal, Sub Court, Bhavani.

8. The Insurance Company is directed to deposit the entire award amount, less the amount already deposited if any, along with interest at the rate of 6% p.a. 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. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

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Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,  
Sub Court, Bhavani.

Copy to:

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.7590  
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.7528  
+1cc to Mr.V.Balamurugan, Advocate, S.R.No.8114

C.M.A.No.3210 of 2014

SSI(CO)  
RS(07/06/2017)