

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM:

THE HONOURABLE Dr JUSTICE S.VIMALA

C.M.A.No.686 of 2017

and

C.M.P.No.3853 of 2017

The National Insurance Co. Ltd.,
88-F, Bypass Road,
Dharmapuri.

... Appellant/2nd Respondent

Versus

1.S.Nagarajan

... 1st Respondent/Petitioner

2.Chinnammal

... 2nd Respondent/1st Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.02.2007 made in M.C.O.P.No.125 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District Court), Dharmapuri.

For Appellant : Mr.S.Arunkumar

JUDGMENT

The claimant S.Nagarajan, aged 52 years, working in a Dharmapuri District Co-operative Bank at Palacode Branch, earning a sum of Rs.11,033/- p.m., met with an accident on 18.07.2002 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.125 of 2005 before the Motor Accident Claims Tribunal (Additional District Court), Dharmapuri, claiming compensation of Rs.5,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.2,45,035/-, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Transport expenses	-	Rs. 16,750/-
Extra nourishment	-	Rs. 10,000/-
Pain and sufferings	-	Rs. 20,000/-
Medical expenses	-	Rs. 52,285/-
35% disability	-	Rs. 35,000/-
Loss of comfort	-	Rs. 25,000/-
Loss of enjoyment of amenities-	-	Rs. 75,000/-
Loss of income	-	Rs. 11,000/-

Total	-	Rs. 2,45,035/-

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1.2. Challenging the quantum of compensation, the Insurance Company has filed this appeal.

2. The contention of the learned counsel for the appellant is that the compensation of Rs.75,000/- for loss of enjoyment of amenities, Rs.35,000/- for the disability at 35%, Rs.25,000/- towards loss of comfort, are excessive and it needs to be proportionally reduced.

3. In order to appreciate the contention, it is necessary to look into the nature of injuries, period of treatment and nature of disablement sustained by the claimant.

3.1. According to the claimant, he suffered fracture in the right hand, right shoulder, right leg, right hand finger and left fore-head and he took treatment at Dharmapuri Government Hospital and apart from that, he took treatment at Gopi Hospital, Salem and Manipal Hospital, Bangalore.

3.2. Due to the disablement, his promotional prospects are likely to be affected. The doctor has certified the disability at 35% taking into account the fracture of 3rd and 5th metatarsal bones in the right foot.

3.3. Apparently looking into the award, it may appear to be overlapping and excessive, but, in respect of 35% percent disability, if loss of earning capacity is considered or if disablement compensation is awarded at Rs. 2000/- per percentage, the award would be more under the head of disablement. The loss of comfort awarded at Rs.25,000/- has to be restructured and accommodated under the head of disablement.

3.3. Even if the award may be considered to be slightly on the higher side, during the year 2007, because of escalation in cost of living and reduction in the value of money, the award amount cannot be said be excessive in the year 2017.

3.4. Therefore, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 06.02.2007 made in M.C.O.P.No.125 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District Court), Dharmapuri.

4. The Insurance Company is directed to deposit the entire amount of compensation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six 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(CS V)

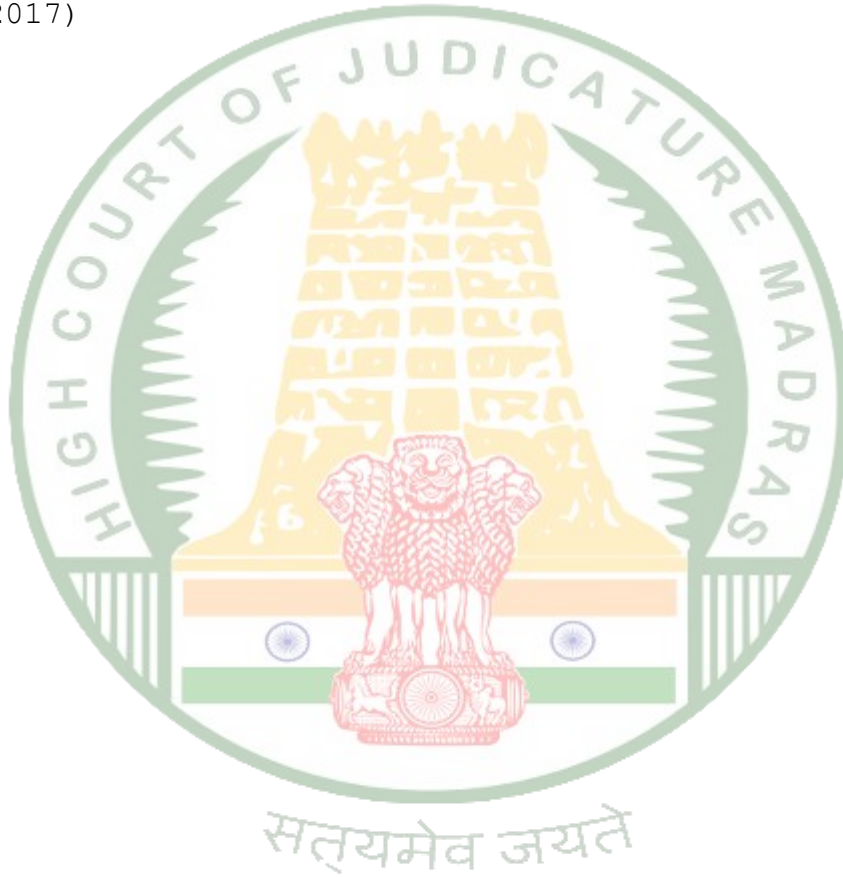
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To

The Additional District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

C.M.A.No.686 of 2017

KK (CO)
CA (28/06/2017)



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