

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.690 of 2017
and
C.M.P.No.3855 of 2017

The Branch Manager,
The United India Insurance Co. Ltd.,
Branch Office, No.11, CMC Road,
Ambur, Vellore. ... Appellant/2nd Respondent

Versus

1.V.Murugan ... 1st Respondent/Petitioner

2.C.Govindasamy ... 2nd Respondent/1st Respondent
(R2 was set ex parte before
the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2011 made in M.C.O.P.No.423 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Dharmapuri.

For Appellant : Mr.T.Ravichandran

For R-1 : Mr.M.Selvam for R1

R-2 : Set exparte before
the Tribunal

JUDGMENT

One Murugesan, aged 35 years, employed as a mason, earning a sum of Rs.8,000/- per month, met with an accident on 03.12.2006 and sustained injuries. In respect of the same, he filed a claim petition in M.C.O.P.No.423 of 2008 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Dharmapuri, claiming compensation of Rs.10,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.2,45,700/-. The break-up details of the compensation read as follows:

Loss of income (3 months x Rs.3000)	-	Rs. 36,000/-
Permanent disability (35%)	-	Rs. 80,000/-
Pain and suffering	-	Rs. 80,000/-
Medical expenses	-	Rs. 35,700/-

Transport	-	Rs. 7,000/-
Nutrition	-	Rs. 7,000/-

Total	-	Rs.2,45,700/-

2. The learned counsel appearing for the appellant would contend that the award of compensation of Rs.80,000/- towards pain and sufferings and Rs.80,000/- towards disablement of 35% are excessive.

3. To understand the details of compensation awarded, it is necessary to consider the parameters under which the compensation has been quantified.

3.1. The petitioner has sustained fracture of Tibia and Fibula in the right leg and interlocking nailing has been done during the surgery. He has also suffered deep vein in the right leg. Though the disability has been certified by the Doctor at 45%, the Tribunal has taken the disability only at 35%. Considering the fact that the petitioner had been doing the job of mason, certainly, the disablement would have the impact upon his earning capacity.

4. It is relevant to point out that the Tribunal did not award compensation towards loss of earning capacity, when the petitioner was aged 35 years at the time of accident. The Tribunal should have considered future prospective increase in income and that has also not been considered. Hence, the award cannot be said to be excessive.

5. Even assuming that award under the head of pain and suffering is excessive, that amount would have to be awarded towards loss of enjoyment of amenities and loss of earning capacity.

6. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 28.06.2011 passed in M.C.O.P.No.423 of 2008 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Dharmapuri.

7. 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 order. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

<https://hcservices.ecourts.gov.in/hcservices/> //True Copy//

Sub Assistant Registrar

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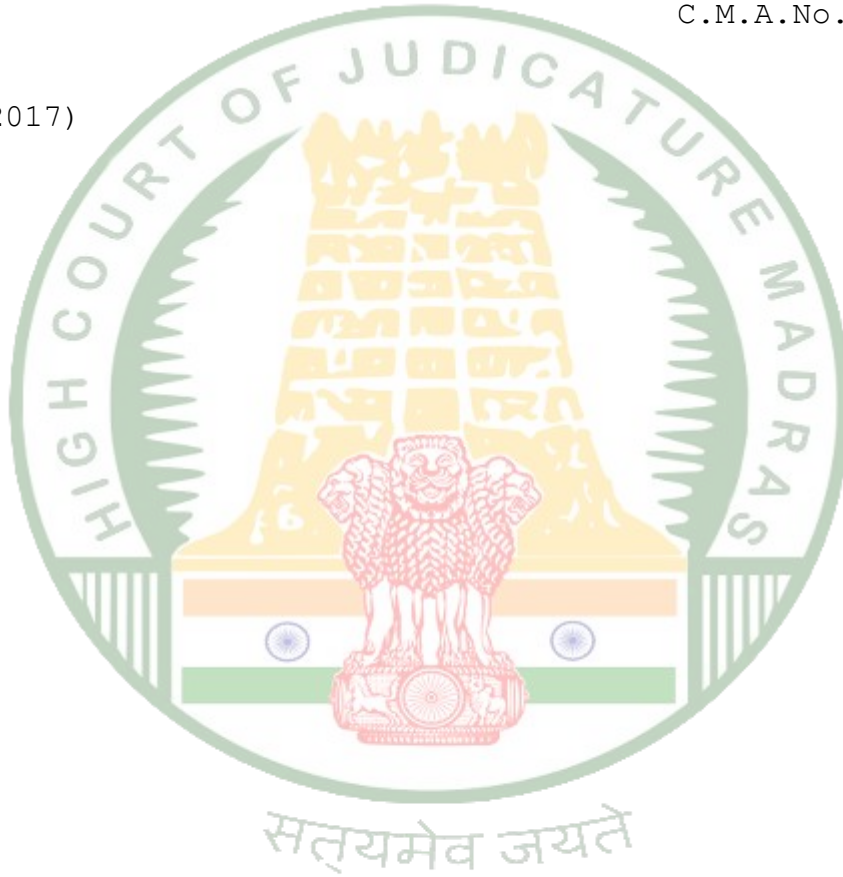
To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Dharmapuri.

+lcc to Mr.T.Ravichandran, Advocate, S.R.No.13346

C.M.A.No.690 of 2017

KJ(CO)
CA(13/07/2017)



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