

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2094 of 2017
and C.M.P.No.11122 of 2017

The National Insurance Company Limited,
165 Nethaji Road, Manjakuppam,
Cuddalore – 1

... Appellant

..VS..

1. Gandhi
2. Chandra

... Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the decree and Judgment, dated 22.07.2005, made in
M.C.O.P.No.1753 of 2003 on the file of the Motor Accident Claims
Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellant : Mr. S.Vadivel

सत्यमेव जयते

J U D G M E N T

This Appeal has been filed by the Insurance Company,
challenging the quantum of compensation, as exorbitant.

2. The claimant, aged 45, a Civil Contractor, earning a sum of

Rs.7,500/- per month, met with an accident, on 11.08.2003. This accident had happened, while the claimant has been travelling in a TVS Moped, which was hit by a Tata Sumo car.

3. The claimant has filed a claim petition in O.P.No.1753 of 2003. The claimant/injured had been admitted in Government Hospital, Cuddalore, immediately after the accident and thereafter, he was shifted to a private hospital. The Doctor has been examined to speak about the permanent disablement on account of the fractures suffered by the claimant, in the right leg tibia bone. Implant has been used during surgery. There had been disfiguration in the leg. There is restriction in the movement. There had been difficulty in sitting in cross legs and the disablement has been certified at 40%. The monthly income of the claimant has been taken as Rs.3,000/-. The monthly loss has been quantified at 40% and the disablement has been assessed at Rs.1,200/- (Rs.3,000/- x 40/100). The annual loss has been ascertained at Rs.14,400/-. As he was aged 45, the multiplier of '16' has been adopted and compensation has been awarded at Rs.2,30,400/- (Rs.14,400/- x 16).

4. The learned counsel appearing for the Insurance company / appellant would submit that it is not a case where multiplier method of quantification has to be adopted, especially, when the disablement was only 45%.

5. It is not only the percentage of physical disablement but the consequences of physical disablement especially which reflects in the functional disablement of the injured. The possible functional disablement as alleged by the claimant is supported by the evidence of the Doctor. The Tribunal has considered the loss of earning capacity only to the extent of 40% and not 100%. Therefore, the contention that this is not a fit case for adopting multiplier method of quantification cannot be accepted. Even assuming that the award for loss of earning capacity is slightly excessive it could have been successfully challenged if at all the appeal had been filed in time. The appeal presented in the year 2006, i.e., on 02.01.2006, has been listed for hearing only on 10.07.2017. In the meantime, there is an inevitable consequences of reflection on the value of money, i.e., the value of money has suffered reduction.

6. It is relevant to point out that, apart from the loss of

earning capacity, the compensation towards pain and suffering has been awarded at Rs.10,000/-, transport expenses at Rs.1,000/-, extra nourishment at Rs.5,000/-, medical expenses at Rs.9,083/- and thus, the total amount of compensation has been quantified.

7. The loss of enjoyment of amenities has not been considered at all. Even if the loss of earning capacity awarded is more that will be bifurcated into disablement compensation and loss of amenities of life. Therefore, the overall quantum is appears to be reasonable.

8. In view of the above, the Appeal has no merits and therefore, this Civil Miscellaneous Appeal is dismissed. The appellant / Insurance company is directed to deposit the compensation amount, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account of the major claimant, through RTGS. No costs. Consequently, the connected CMP is closed.

10.07.2017

Index : Yes / No
Web : Yes / No
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To

1. Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104



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Dr. S.VIMALA, J.,

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