

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A. No.2128 of 2017

and

C.M.P. No.11278 of 2017

The Divisional Manager,
The Oriental Insurance Co. Ltd., Vellore Appellant

Versus

1. Vijayakumar
2. Marimuthu ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.A.C.T.O.P. No.433 of 2002 on the file of Motor Accidents Claims Tribunal (Subordinate Judge) at Cheyyar, dated 11.03.2005.

For Appellant : Mr.M.Krishnamoorthy

JUDGMENT

The appeal has been filed by the insurance company challenging the quantum of compensation.

2. The claimant Vijayakumar, aged 20, self employed, who was running a provision shop and earning a sum of Rs.3,000/- per month, met with an accident on 02.09.2002. He filed the claim petition before the Tribunal claiming

compensation for a sum of Rs.2,50,000/-. The Tribunal on consideration of the materials placed before it, has awarded a compensation of Rs.1,07,000/-. Challenging the award as excessive and disproportionate, the insurance company has filed this appeal.

3. The main ground taken by the learned counsel for the appellant is that in respect of the fracture of right clavicle bone to the claimant, the award is excessive. He further contends that the disability as certified by the Doctor at 25% is exorbitant and the Tribunal is not justified in following the second schedule of the Motor Vehicles Act.

4. In order to appreciate the contention of the learned counsel for the appellant, it is necessary to look into the break up details of the award passed and the nature of the injuries sustained.

5. The Doctor, who examined the claimant has deposed that there had been a fracture of right clavicle bone, which resulted in malunion. Because of the malunion, there is difficulty in carrying heavy and weighty object, It is needless to say that this disablement would hamper earning capacity of the claimant.

6. The Tribunal had taken permanent disability at 20% and by taking the

age of the claimant as 21 and the monthly income at Rs.2,500/-, in respect of 20% disablement, multiplier of 17 has been adopted and thus loss of earning capacity was arrived at Rs.1,02,000/-. For pain and suffering a sum of Rs.5,000/- was awarded.

7. The learned counsel for the appellant would submit that it is not a fit case to apply multiplier method for quantification even for 20% disablement.

8. The learned counsel for the respondent would submit that the accident itself occurred, while the claimant had been driving the vehicle and the disablement suffered would affect the earning capacity atleast to the extent of 20%

9. It is apparent that the award under the head "medical bills", "extra nourishment", "cost of attendant charges", "loss of enjoyment of amenities" and "disablement compensation" have not been awarded at all, even though there is malunion of bones. Itemisation of compensation, if done under those head, the award of Rs.1,07,000/- cannot be said to be excessive.

10. The Hon'ble Supreme Court in the case of CIVIL APPEAL NO. 896 OF 2014 (Arising out of SLP(C) NO. 21303 OF 2013) Sanjay Kumar vs Ashok Kumar & Anr on 24 January, 2014 has highlighted the items to be considered in case of injuries sustained by the claimant and incidentally has referred the

decision in the case of Rajkumar V. Ajay Kumar and the relevant observation reads as under:-

“In the case of [Raj Kumar v. Ajay Kumar & Anr.](#)[3], this Court has succinctly explained the guidelines and heads for awarding compensation in cases of disability due to a motor accident. The relevant paragraphs are extracted below:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and

(vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item(iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant”.

11. Under the above stated circumstances, the appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

12. The appellant/Insurance company is directed to deposit the entire award amount along with interest and costs as ordered by the Tribunal, less the amount already deposited, if any before the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant, through RTGS within a period of two weeks thereafter.

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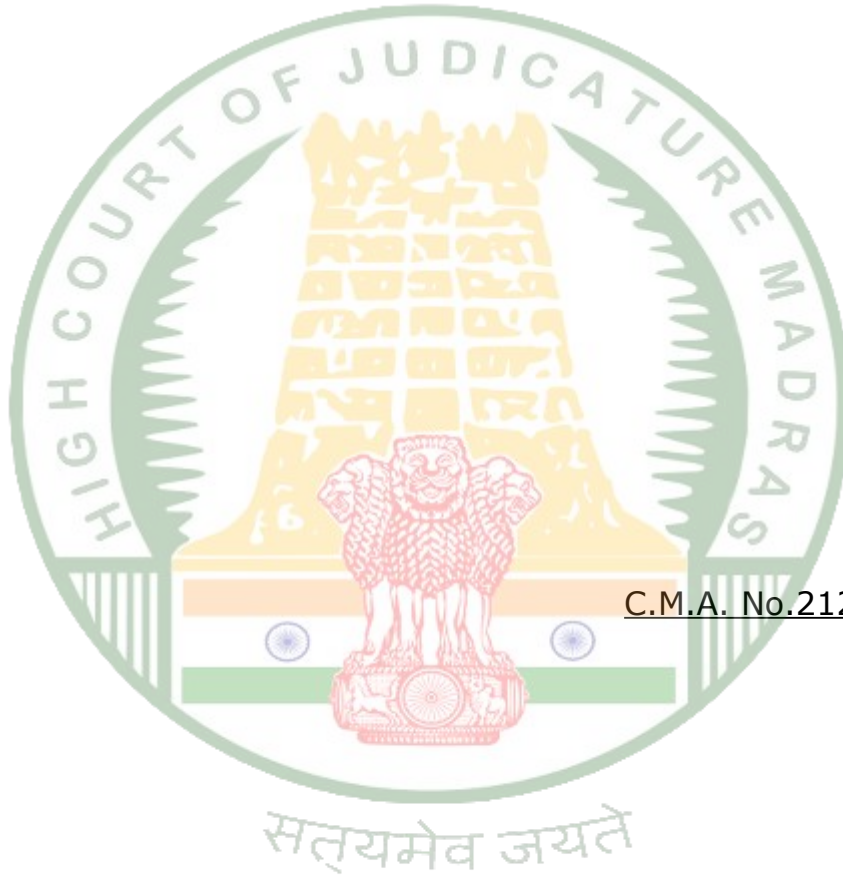
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To

1. Motor Accidents Claims Tribunal (Subordinate Judge) at Cheyyar.
2. The Section Officer, V.R Section,
Madras High Court, Chennai.

Dr.S.VIMALA, J.

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