

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALAC.M.A.No.2326 of 2017
and C.M.P.No.12451 of 2017

Bajaj Allianz General Insurance Co. Ltd.,
Branch Office, Naavaadian Agencies,
56 Salem New Bypass Road,
LNS Post, Karur District

... Appellant

..vs..

1. Physically and Mentally Disabled, K.Arumugam,
2. M.Raja
3. R.Natarajan
(R-2 and R-3 were set ex-parte by the Tribunal)

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 27.08.2007 made in MCOP No.116 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram.

For Appellant : Mr. K.Padmanabhan

JUDGMENT

Originally Claim Petition in MCOP No.116 of 2006 has been filed by the claimant, K.Arumugam. He is described as the person, who is physically and mentally disabled and therefore, he is represented by his next friend, Wife, K.Soundaram.

2. The claim petition has been filed in respect of the injuries sustained by the first respondent herein / petitioner / claimant, K.Arumugam, who was aged 55, an agricultural coolie and the Transport Operator, earning a sum of Rs.7,000/- per month. As against the claim made for a sum of Rs.10,00,000/- , the compensation has been awarded by the Tribunal at Rs.6,50,474/- with the following breakup details:-

Loss of income	- Rs. 12,000/-
Transportation expenses	- Rs. 5,000/-
Extra Nourishment	- Rs. 2,000/-
Pain and sufferings	- Rs. 15,000/-
Disability	- Rs. 38,000/-
Loss of future earning power	- Rs.1,00,000/-
Hospital charges (as per Exs.P-12 to P-16)	- Rs.4,78,474/-

Total	- Rs.6,50,474/-

2.1. Challenging the quantum of compensation as exorbitant, the Insurance Company has filed the Appeal.

3. The learned counsel for the appellant / Insurance Company would submit that the award passed is not in accordance with the well settled principles laid down by the Hon'ble Apex Court and therefore, the award requires proportionate reduction.

3.1. It is pointed out that, when an amount of Rs.38,000/- has been awarded towards disability, the award of compensation at Rs.1,00,000/- towards future loss of earning capacity is a duplication in the award and

therefore, it requires modification.

4. In order to appreciate the contentions raised, it is necessary to find out the nature of injuries and the period of treatment.

5. From the history of accident / history of the treatment given by the claimant, it is evident that the claimant has sustained giddiness in the place of the accident itself and he has been taking treatment at Government Hospital, Kangeyam, and K.G.Hospital, Coimbatore. The injuries had been on the left side of the brain leading to haemotoma in the brain. He has taken treatment in the hospital from 15.09.2005 to 27.10.2005, i.e., for a period of more than one month, as inpatient at K.G.Hospital. Surgery has been performed in the parietal region for the removal of haemotoma. Considering this, the loss of income has been awarded for a period of four months. Considering the period of treatment, the award under transport expenses and extra nourishment have been fixed.

6. Towards supporting the nature of injury suffered by the claimant, a Doctor has been examined and he has certified the percentage of disability at 38%. For the second time also, during the year 2006, the claimant has been admitted as inpatient from 15.02.2006 to 20.03.2006; a part of the skull has been removed and artificial skull has been used for the purpose of preventing the leakage of blood. Therefore, the compensation of Rs.15,000/- has been

awarded for pain and sufferings. Admittedly, for this kind of major surgery, award of Rs.15,000/- towards pain and sufferings, Rs.5,000/- towards transport expenses, Rs.2,000/- towards extra nourishment are extremely low.

7. Considering the fact that the claimant / petitioner has suffered loss of consciousness, loss of income has been fixed. Therefore, the amount of compensation fixed by the Tribunal cannot be said to be excessive, considering the long history of medical treatment, medical bills paid by the claimant and the impact of disability upon the earning capacity, etc.,

8. There is evidence to show that even in the year 2006, there had been treatment to remove the extra water and the infection from the left side of the head. The medical expenses awarded have been found to be supported by medical bills and the receipts issued by the hospital. The followings are the details of the bills considered:-

(i) Ex.P-12 –	Rs.1,88,583/-;
(ii) Ex.P-13 –	Rs. 77,745/-;
(iii) Ex.P-14 –	Rs. 32,144/-;
(iv) Ex.P-15 –	Rs.1,25,502/-;
(v) Ex.P-16 –	Rs. 54,500/-.

Rs.4,78,474/-

9. From these details, it is evident that the major part of the award has been towards reimbursement of medical expenses and it does not appear to compensate the claimants. This Court is not in a position to consider the

enhancement of compensation because of the fact that the Appeal filed in the year 2007 has been taken-up for hearing only in the year 2017.

10. In view of the above reasonings, the Appeal has no grounds and thus, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected CMP is closed.

11. The appellant / Insurance Company shall deposit the entire amount of compensation, less the amount already deposited, as awarded by the Claims Tribunal, 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.

19.07.2017

Index : Yes / No

Web : Yes / No

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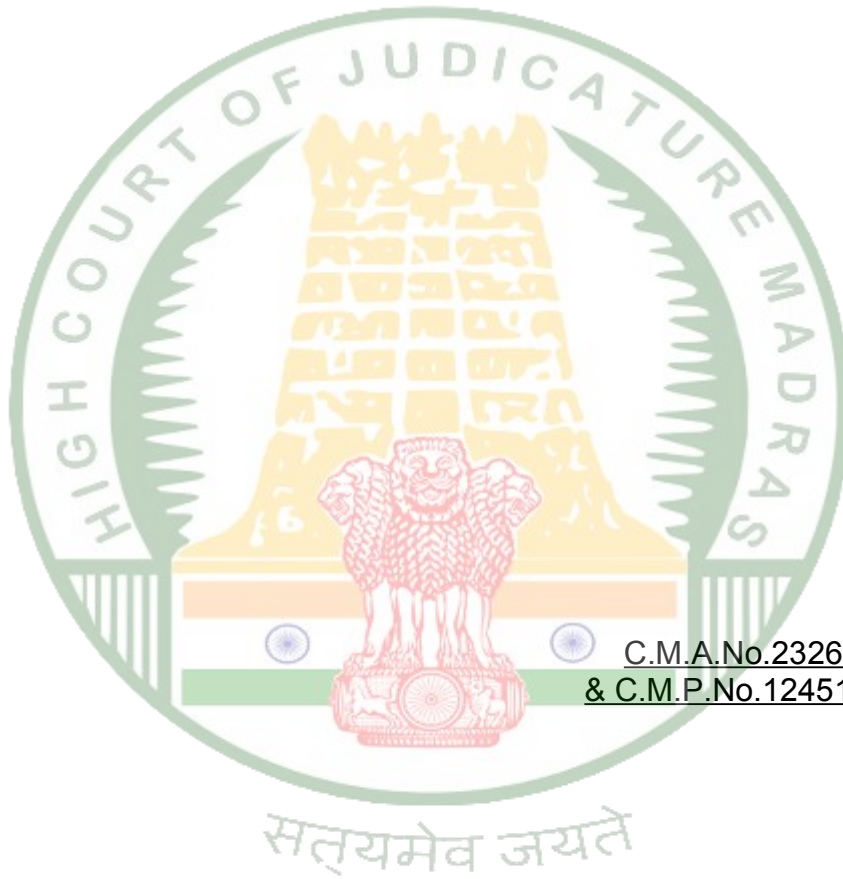
To

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

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Dr. S.VIMALA, J.,

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