

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2269 of 2017

in

C.M.P.No.15263 of 2017

M/s.United India Insurance Company Limited,
Catholic Centre I floor,
No.64, Armenian Street,
Chennai – 600 001.

.... Appellant

Vs.

1. M.Gomathi
2. P.R.Manjunath

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Award passed in M.C.O.P.No.7447 of 2014, dated 20.01.2017, on the file of Motor Accident Claims Tribunal (In the II Court of Small Causes), at Chennai.

For Appellants : Mr.J.Michael Visuvasam

For Respondents : Mr.S.Ravikumar for R-1

J U D G M E N T

The claimant, M.Gomathi, aged 37, met with an accident on 28.11.2014, in which the claimant sustained injuries. Therefore, the claimant filed a claim petition claiming a sum of Rs.10,00,000/-.

2. The Tribunal, on consideration of oral and documentary evidence, awarded a compensation of Rs.2,88,000/-, as against the claim made for a sum of Rs.10,00,000/-, under the following break-up details:

Transportation, nourish food and Miscellaneous Expenditure	-	Rs. 50,000/-
Medical Expenses	-	Rs. 2,300/-
Future Medical expenses	-	Rs. 10,000/-
Attender Charges	-	Rs. 5,000/-
Damages for pain, suffering and Trauma	-	Rs. 50,000/-
Disability	-	Rs.1,20,000/-
Loss of earning during the period of Treatment	-	Rs. 30,000/-
Loss of Amenities	-	Rs. 20,000/-
Total		Rs.2,87,300/-
		Rounded off to Rs.2,88,000/-

3. Assailing the award as disproportionate to the injuries suffered, the appellant/insurance company has filed this appeal.

4. The main contention raised by the learned counsel for the appellant is that the permanent disability assessed by the Doctor at 45% is excessive, considering the fact that the claimant suffered only simple injuries.

5. The learned counsel for the claimant submits that from the injuries sustained and the discharge summary, the injuries may appear to be simple in nature, but on a detailed perusal of the same would reveal that the injuries are not so simple as described in the medical certificate. Further, the injury sustained by the claimant being a head injury, the claimant would suffer the effects of the said injury throughout his life and, therefore, the Doctor has assessed the disablement at 45%.

6. The learned counsel for the claimant further pointed out the details and consequences arising on account of head injuries, namely, **Head Injury:** Abrasions on Right Elbow 4 x2 cms, Abrasions left Olecranon on Right lateral aspect of Fore Arm, Contusions over right Temporo Parietal Scalp, **CT Scan:** Sub Arachnoid Hemorrhage in bilateral fronto parietal parasagittal region; Management: Conservative management with IV Fluids, Antibiotics, Analgesics, Vitamins. Disability due to the above injury are **Post Traumatic Head Ache:** (Ruling out other common causes of head ache like, sinuses, frontal, maxillary, ethmoidal: proved negative, Bilateral occlusion of superficial temporal arteries No remission, visual acuity normal 10%. **Post Traumatic Vertigo:** (Tests done DIX Hall pike and calorie tests were +ive)

Terst=byhyper extending the neck, it was noticed of extra ocular movements, jerky in nature similar to Nystagmus 10%. Sensory ATAXIA.

7. However, learned counsel for the appellant submits that the nature of injuries and the consequent disability, if at all the same is accepted, the disability can only be to the extent of 30% and not 45% as assessed by the Doctor PW-2.

8. On a careful consideration of the contention advanced on behalf of the parties and a perusal of the injuries sustained by the claimant and the impact on the future life of the claimant, this Court is of the considered view that the disability assessed at 45%, is on the higher side. Though the disability, as per the doctor, may be 45%, however, this Court is of the considered view that the functional disability could be only to the extent of 30%. In such view of the matter, this Court awards Rs.3,000/= per percentage of disability for the disability of 30%. Accordingly, the disablement compensation is quantified at Rs.90,000/-.

9. Insofar as the compensation under the other heads are

concerned, considering the fact that the injured was inpatient for three days, the cost of attendant charges awarded at Rs.5,000/- is sustainable. The amount awarded towards pain, sufferings and Trauma at Rs.50,000/- is reduced to Rs.10,000/-. The amount awarded towards the transportation, extra nourishment and miscellaneous expenditure at Rs.50,000/- is reduced to Rs.25,000/-. The amount awarded under the head of loss of earnings is reduced from Rs.30,000 to Rs.15,000/- and the loss of amenities is reduced from Rs.20,000/- to Rs.15,000/- The amount awarded towards the medical expenses at Rs.2,300/- is as per the medical bills, hence, the amount awarded under that head is confirmed. Thus, the total amount of compensation is quantified at Rs.1,62,300/-.

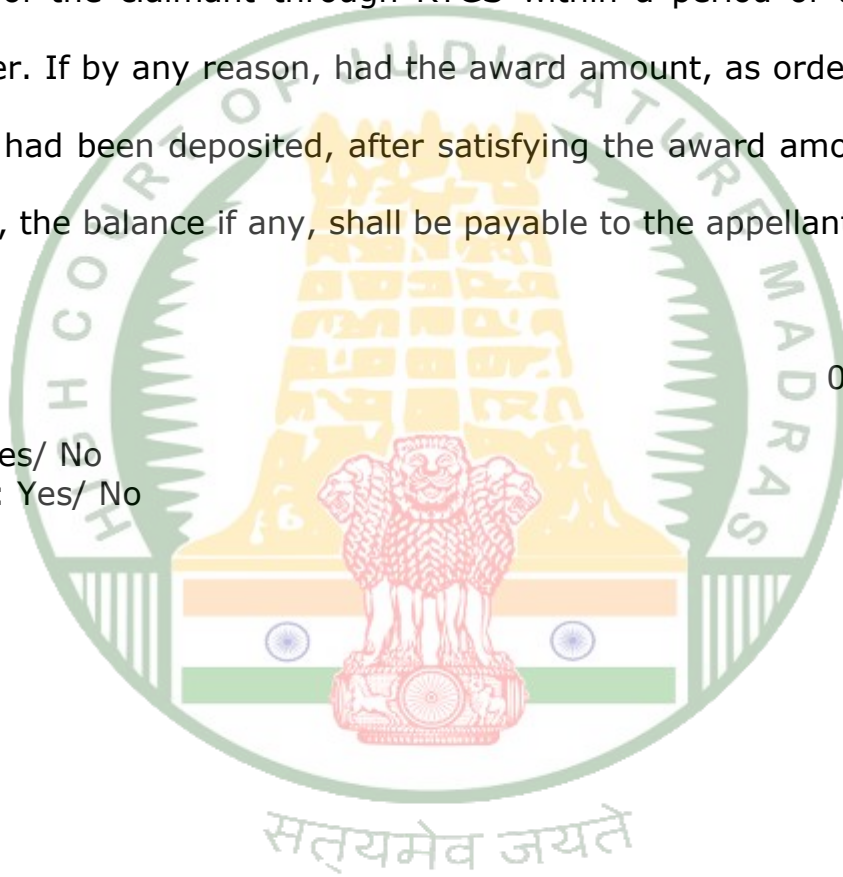
10. In the result, this Civil Miscellaneous Appeal is allowed, reducing the total amount of compensation from Rs.2,87,300/- to 1,62,300/-, which is payable with interest at 7.5% from the date of petition till the date of deposit. Consequently, connected Civil Miscellaneous petition is closed. No costs.

11. The Appellant / Insurance Company is directed to deposit the entire award amount, as awarded by this Court above, along with

interest and costs, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit being made, the Tribunal shall transfer the amount directly to the savings bank account of the claimant through RTGS within a period of two weeks thereafter. If by any reason, had the award amount, as ordered by the Tribunal had been deposited, after satisfying the award amount to the claimant, the balance if any, shall be payable to the appellant.

08.09.2017

Index: Yes/ No
Internet: Yes/ No
kv/GLN

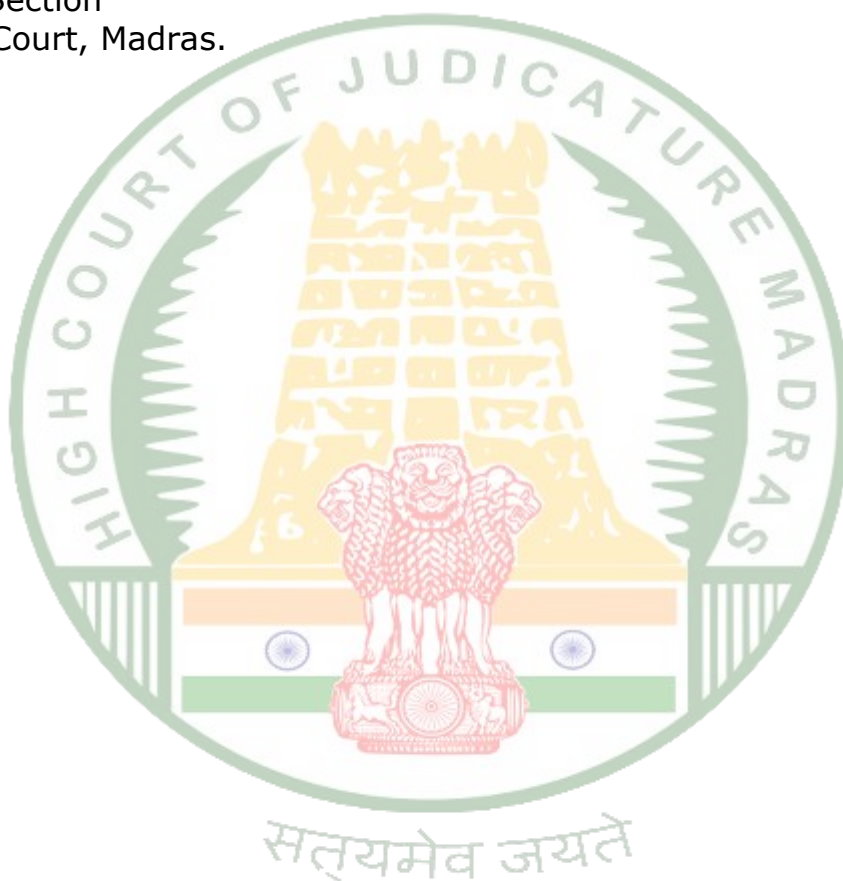


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To

1. The Motor Accident Claims Tribunal
(In the II Court of Small Causes)
Chennai.

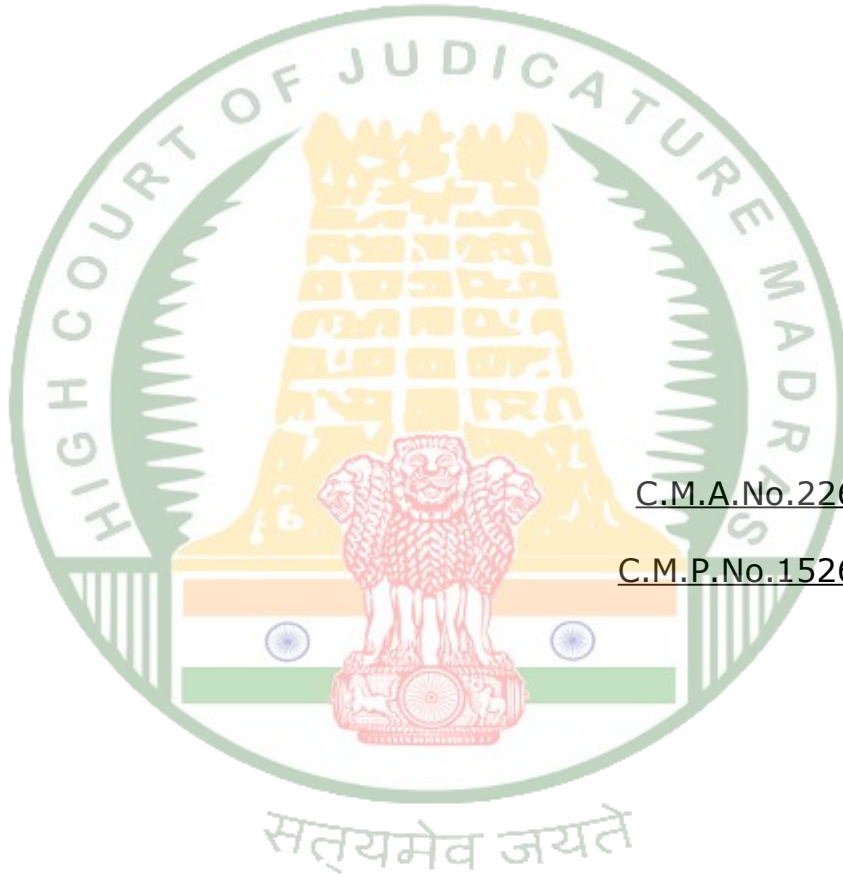
2. The Section Officer
V.R. Section
High Court, Madras.



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Dr.S.VIMALA, J.

Kv/GLN



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