

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.242 of 2017

and

C.M.P.Nos.4655 of 2017 &1562 of 2017

The New India Assurance Co.Ltd.,
No.106, Big Street,
Tiruvannamalai.

.. Appellant

/Vs/

1.R.Velu
2.D.Pandiyan
(R2 remained ex-parte before
the tribunal)

.. Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.04.2014 made in M.C.O.P.No.998 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur, Tirupattur.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.Elizabeth Ravi
No.1

JUDGMENT

This appeal has been filed by the Insurance Company, challenging the quantum of compensation.

2. The claimant, R.Velu, aged 48 years, driver by profession, earning a sum of Rs.10,000/- per month, met with an accident on 17.04.2008.

2.1. According to him, he sustained crush injury of the right leg and thus, it has led to deficiency in mobility and he has lost his earning capacity completely and totally. In support of the contention of the claimant, doctor has certified the disablement at 70%. The Tribunal, on considering the materials placed before it, has quantified the compensation at Rs.8,53,592/- and the following are the breakup details;

For Loss of income during treatment period	-	Rs. 36,000 . 00
For Extra - nourishment	-	Rs. 10,000 . 00
For Medical expenses	-	Rs. 35,792 . 00
For Pain and sufferings	-	Rs. 50,000 . 00
For future loss of income	-	Rs.5,61,600 . 00
For Transport charges	-	Rs. 10,200 . 00
For loss of amenities	-	Rs. 75,000 . 00
For humiliation and loss of longevity	-	Rs. 75,000 . 00
Total		Rs. 8,53,592 . 00

3. Challenging the award of compensation as exorbitant, the Insurance Company has filed this appeal.

4. The main contention of the learned counsel for the Insurance Company is that the loss of earning capacity has been arrived at without any basis and the award under the head of loss of amenities and pain and sufferings are on the higher side.

5. In order to appreciate the contention raised, it is necessary to look into the details of the award passed.

5.1. While arriving at the loss of earning capacity, the Tribunal has adopted the monthly income at Rs.6,000/- and multiplier 13 has been adopted. The claimant aged 49 years at the time of the accident and he has suffered crush injury over the right leg. Dr.Selvanathan, who has been examined to speak about permanent disablement certified permanent disability as 70% (Ex.P19). However the tribunal has fixed the permanent disablement at 60%. The loss of earning capacity has been calculated in respect of 60% of functional disability. The calculation adopted is Rs.6000/- x 60%x12x13 = 5,61,600/-.

6. The learned counsel for the first respondent/claimant would submit that the monthly income taken at Rs.6,000/- cannot be reduced further, as the future prospective increase in income has

not been considered. It is also submitted that the loss of functional disability ought to have been taken at 100% but it was taken only at 60%.

7. It is pointed out that because of crush injury, the first respondent/claimant could not pursue his avocation as a driver and therefore, the award under the head of loss of earning capacity has to be sustained accepting the submission of the learned counsel for the first respondent.

8. The award under the head of loss of humiliation and loss of longevity at Rs. 75,000/- is said to be without any basis and accepting this contention of the appellant, the award under the head of loss of humiliation and loss of longevity is ordered to be set aside.

8.1. As the medical expenses awarded is according to bills, the medical bills awarded at Rs. 35,792/- is rounded off to Rs.36,000/-. Loss of income for 6 months has been calculated at Rs.36,000/- and now that is sought to be reduced to 3 months. So, the loss of monthly income for 3 months is arrived at Rs.18,000/-.

9. The next claim is under the head of loss of enjoyment of amenities that is estimated at 75,000/- and the same is reduced to Rs.70,000/-. Transport charges awarded is rounded off to Rs.10,000/-.

10. In the result, the award of the Tribunal at Rs.8,53,600/- is reduced to Rs.7,55,600/- with interest @ 7.5% per annum from the date of petition. No costs. Consequently, connected miscellaneous petition are closed.

11. It is represented by the appellant/Insurance company that as per order of this Court dated 09.02.2017, the insurance company has deposited the entire award amount as determined by the claims tribunal along with interest at 7.5% from the date of petition till the date of deposit and costs before the Tribunal. The tribunal is directed to transfer the award amount, as determined by this court, directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. The Insurance company is directed to withdraw the surplus amount, if any, which was deposited by it.

Index : Yes/No
Internet : Yes/No
sms/kv

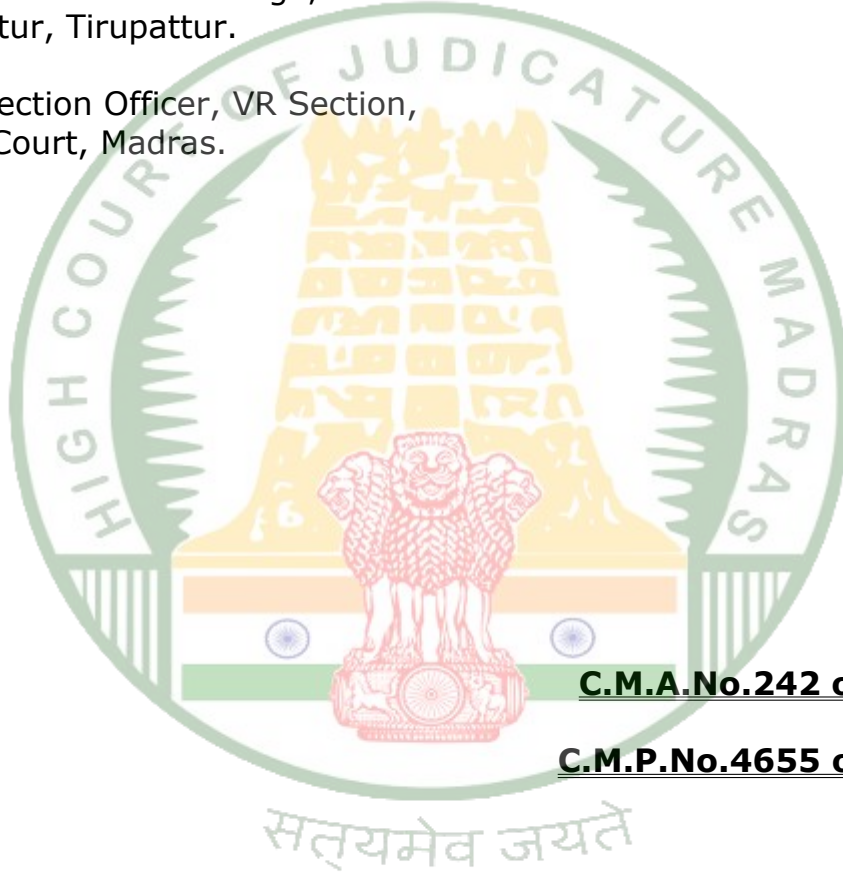
25.07.2017

S.VIMALA,J.

sms/kv

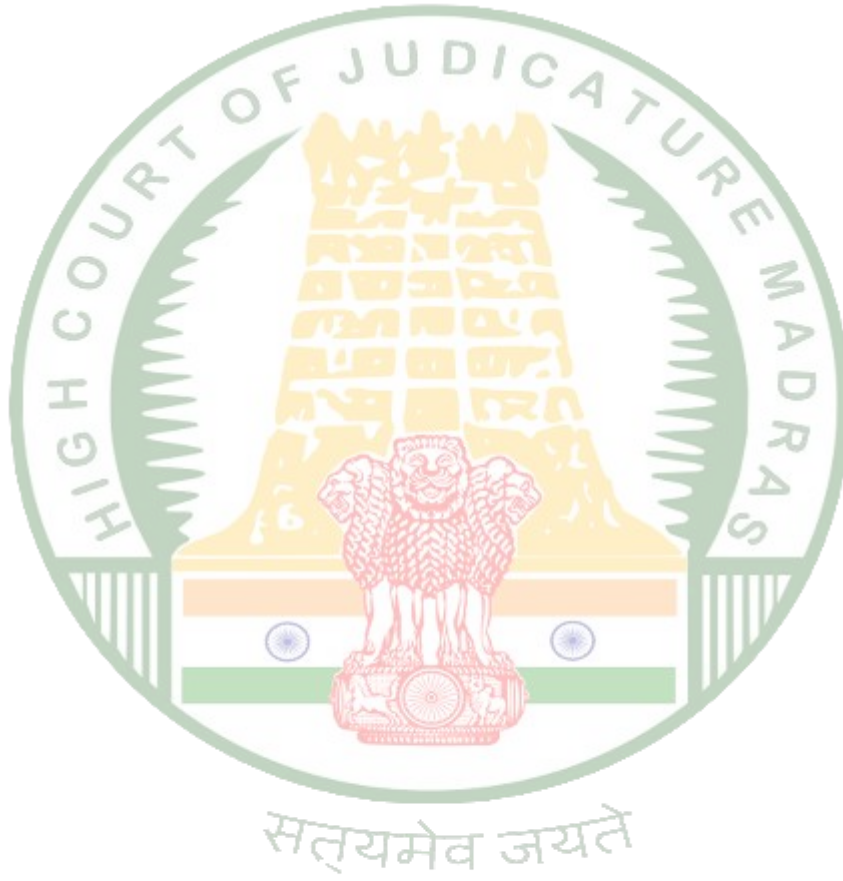
To

- 1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Tirupattur, Tirupattur.
2. The Section Officer, VR Section,
High Court, Madras.



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