

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2657 of 2017

Divisional Manager
M/s.New India Assurance
Company Limited,
Divisional Office,
Bharathi Road,
Cuddalore.

... Appellant/Ind Respondent
Trial Court

/Vs/

1. D.Somu
2.S.Rajmohan

... Respondents/petitioner and
1st Respondent in Trial Court

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.12.2005 made in O.P.No.95 of 2005 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) at Cuddalore.

For Appellant : Mrs.R.Sreevidhya

JUDGMENT

Challenging the quantum of compensation awarded by the Tribunal, the appellant/Insurance company has filed this appeal.

2. The claimant, Somu, aged 30 years, an agriculturist and salt vendor, earning a sum of Rs.5,000/-per month, met with an accident, thereby, suffered injuries on the left leg, head, nose, left big toe and left patella for which he took treatment in the Government Hospital, Cuddalore and thereafter at a private hospital. Therefore, he filed a claim petition claiming a sum of Rs.7,00,000/- as compensation. The Tribunal, considering the oral and documentary evidence placed before it, awarded a sum of Rs.1,64,292/- as compensation.

4. The learned counsel for the insurance company submits that the assessment of compensation was neither in accordance with the Workmen's Compensation Act nor following the guidelines of the Central Government towards assessment of disability for a physically challenged person. The specific

contention raised is that a sum of Rs.75,000/- towards loss of earning capacity is excessive.

5. To find out whether the award under the various heads is sustainable or not, the nature of injury, period of treatment and the other contributing factors need to be analysed on the basis of the reasons given by the Tribunal.

6. The Tribunal has considered the wound certificate issued by Cuddalore Government Head Quarters Hospital. In the wound certificate, there is mentioning that there was bleeding from nose, there was a contusion in the forehead measuring 3 x 3 cm and there was a dislocation of bone in the left knee. It is further borne out by records that the claimant took treatment as in-patient at the Puducherry Mahatma Gandhi Hospital from 01.09.2004 to 17.09 2004. The doctor has assessed the disability at 35%. Considering the various parameters and the other records placed before it, the Tribunal quantified the under the following heads:

Pain and suffering	: Rs.10,000/-,
Extra nourishment	:Rs. 2000/-,
Cost of attendant	:Rs. 3,000/-
Medical expenses (supporting by bills)	:Rs. 9,292/-
Monthly income determined at Rs.3,000/- per month, based upon that loss of income for the period of 5 months	:Rs.15,000/-
Loss of earning capacity	:Rs.75,000/-
Loss of enjoyment of amenities	:Rs.50,000/-
Total	:Rs.1,64,292/-

7. On an overall consideration of the entire oral and documentary evidence coupled with the findings arrived at by the Tribunal, this Court is of the considered opinion that the compensation under the heads 'pain & suffering' and 'medical expenses' should be awarded on the higher side considering the nature of injuries and the period of treatment. This Court feels that while the compensation towards 'loss of enjoyment of amenities' can be granted at Rs.10,000/-, the difference of Rs.40,000/- carved out from the said head could be distributed evenly between the heads 'pain & suffering' and 'medical expenses'. Accordingly, this Court quantifies the compensation under the head 'loss of enjoyment of amenities' at Rs.10,000/-, 'pain and suffering' at Rs.30,000/- and an additional amount of Rs.20,000/- over and above the compensation of Rs.9292/- granted by the Tribunal under the

head 'medical expenses'. Insofar as the compensation awarded under the head 'loss of earning capacity' is concerned, considering the age of the claimant, said to be 30 years and other attendant factors including the nature of injury and further no tenable grounds having been made out to interfere with the same, the award of Rs.75,000/- under the said head cannot be termed to be excessive or unreasonable and the same deserves to be confirmed.

8. For the reasons stated above, the award cannot be termed to be excessive or unreasonable, more so the claimant would be receiving the amount only in the year 2017 and keeping in mind the money value and the escalation in the prices of various commodities, the compensation awarded is not liable to be interfered with.

9. There being no merits in the appeal, the same is dismissed, however modifying the award passed by the Tribunal under various heads. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

10. The appellant/Transport Corporation is directed to deposit the entire award amount along with interest at 9% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of MCOP No.95/2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore, 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 amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

सत्यमेव जयते
Assistant Registrar (CO)

//True Copy//

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Sub Assistant Registrar

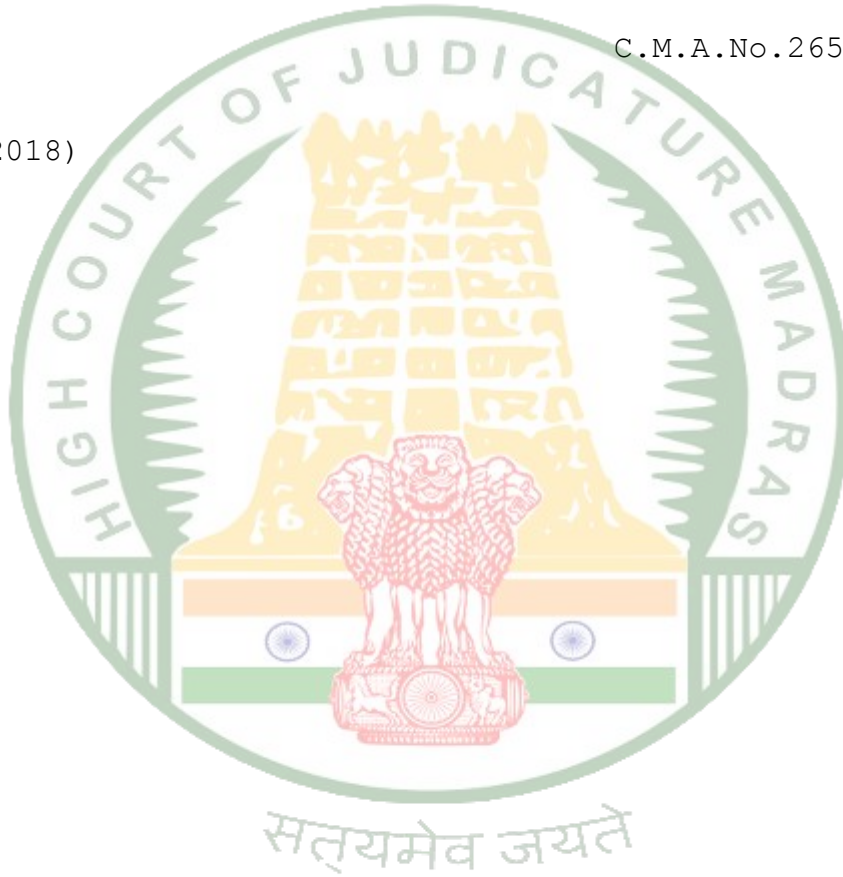
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To

1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate)
Cuddalore.
2. The Section Officer
VR Section,
High Court, Madras.

C.M.A.No.2657 of 2017

SSV(CO)
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