

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.09.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2791 of 2017

and

C.M.P.No.15953 of 2017

United India Insurance Co. Ltd.,
Branch Office,
No.6, Ganga Griha, II Floor,
Nungambakkam High Road,
Chennai – 600 034.

.. Appellant

/Vs/

1.Jayammal
2.M.Selvaraj

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2006 made in M.C.O.P.No.27 of 2005 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

The claimant, Jayammal, aged 49 years, a vegetable and milk vendor, earning a sum of Rs.5,000/- per month, met with an accident on 03.11.2003 in which she suffered amputation. Therefore, she filed a claim petition claiming compensation.

2. It is the case of the claimant that she was walking on

the side of the road and at that point of time, she was hit by the

Tempo bearing registration No.TN 29 8343. Though the claimant estimated the loss of compensation at Rs.15,89,100/-, but restricted the claim to Rs.8,00,000/-. The Tribunal, considering the oral and documentary evidence, awarded compensation of Rs.6,29,981/- under the following heads :-

Disability	:Rs.3,78,000/-
medical expenses	
as per bills	:Rs. 55,481/-
on every two years,	
for change of calipers	
and future medical expenses	:Rs. 50,000/-
loss of income for one year	:Rs. 36,000/-
transport expenses	:Rs. 5,000/-
Extra nourishment	:Rs. 5,000/-
damages to articles	:Rs. 500/-
pain and suffering	:Rs.1,00,000/-

Total compensation	:Rs.6,29,981/-

Challenging the quantum of compensation as excessive, the Insurance company has filed this appeal.

3. Learned counsel appearing for the appellant submits that the monthly income fixed at Rs.3,000/- is exorbitant. It is further submitted that the fixation of the age of the claimant at 44 years is erroneous when the claimant herself admitted during the cross examination that she is 68 years old. It is further submitted that the injuries sustained could not have been resulted in permanent disablement and loss of earning capacity and that multiplier method ought not to have been adopted.

4. A perusal of the order of the Tribunal reveals that the tribunal has fixed the monthly income of the claimant at Rs.3,000/- on the presumption that even if the injured had been employed in doing milk business, she would have earned a daily income of Rs.100/-. Therefore, on that basis, the monthly income has been fixed at Rs.3,000/-. Though on the basis of the injuries suffered and the treatment taken by the claimant at St.John's Hospital, Bangalore, the doctor has fixed the disability at 80%, however, taking the percentage of disablement from the table given in the Employees Compensation Act, the Tribunal fixed the percentage of disablement at 60% and in view of the surgery performed on the claimant's toes, the Tribunal further added 10% towards disability and adopting multiplier of 15, loss of income has been fixed at Rs.3,78,000/-, in respect of 70% of permanent disablement (60% + 10%). The said compensation awarded cannot be said to be unreasonable or excessive. The Tribunal has given cogent reasons for arriving at the said finding and, therefore, the said compensation deserves to be confirmed.

5. Insofar as the compensation awarded under the other heads are concerned, the amount of Rs.55,481/- awarded under medical expenses is supported by bills. On the finding that every

two years change of calipers is required and, therefore, the claimant would entail future medical expenses, a sum of Rs.50,000/- has been awarded. The injuries suffered, the period of treatment and the further treatment would definitely disable the claimant from earning for atleast a period of one year. Therefore, an amount of Rs.36,000/- has been awarded under the head loss of income for a period of one year. The other compensation awarded under the heads transport expenses at Rs.5,000/-, Extra nourishment at Rs.5,000/-, damages to articles at Rs.500/- and pain and suffering at Rs.1,00,000/-, in view of the injuries suffered, the period of treatment and the impact of the injuries on the daily life of the claimant, cannot be said to be excessive or unreasonable. Therefore, the finding and award consequent thereto by the Tribunal on the above heads **deserves** to be confirmed.

6. In the result, the civil miscellaneous appeal is dismissed confirming the order passed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

7. It is submitted that the entire compensation had already been deposited in the year 2009. The said statement is recorded. The Tribunal is directed to transfer the entire award amount directly to the bank account of the claimant/first respondent through RTGS

within a period of two weeks, less the amount, if any, already withdrawn by the claimant.

05.09.2017

Index : Yes/No
Internet : Yes/No
sms/GLN

To

1. The Motor Accidents Claims Tribunal,
I Additional District Judge,
Dharmapuri at Krishnagiri.

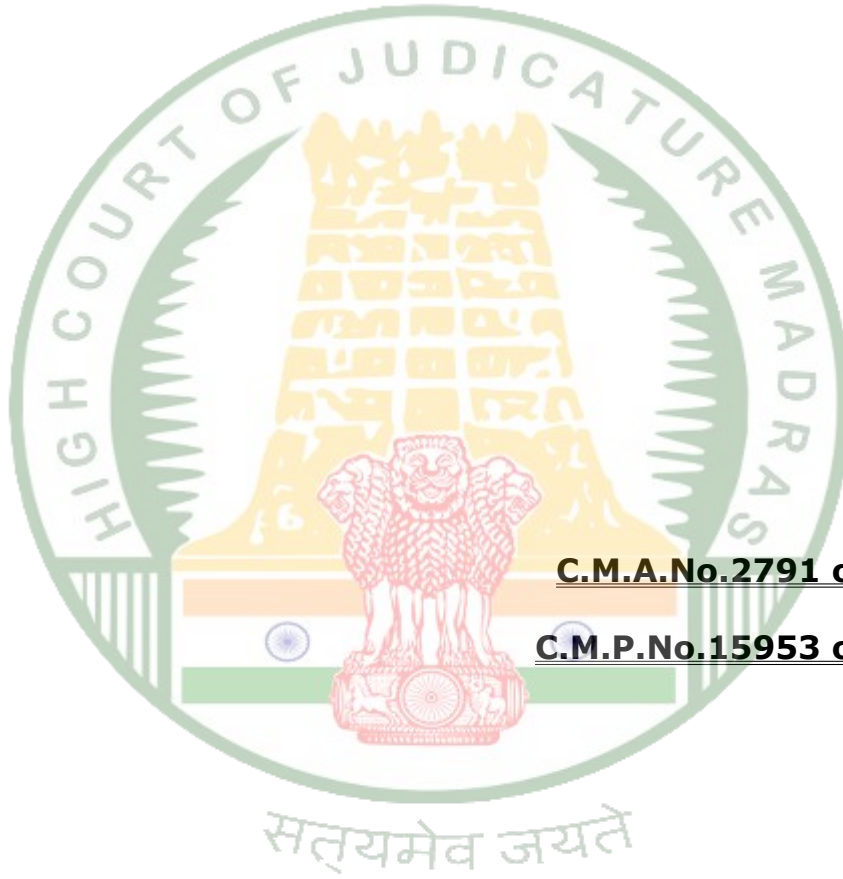
2. The Section Officer, VR Section,
High Court, Madras.



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Dr.S.VIMALA,J.

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