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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2859 of 2017

and

C.M.P. No.16362 of 2017

The United India Insurance Co. Ltd.

Cuddalore

... Appellant/2nd Respondent

Versus

1.L.Lakshmi

2. Sundaramurthy

.. Respondents/Petitioner &  
Is Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 23.09.2004 made in MCOP No.1642 of 2003 on the file of Motor Accidents Claims Tribunal, (Principal Sub-Judge), Cuddalore.

For Appellant : Mr.S.J.Jagadev

#### J U D G M E N T

The claimant, Lakshmi, aged 59 years, milk and curd vendor (self employed), earning a sum of Rs.5,000/- p.m., met with an accident on 09.06.2003. Hence, the claimant filed a claim petition claiming compensation in a sum of Rs.5,00,000/= by filing MCOP No.1642 of 2003 before the Motor Accidents Claims Tribunal, Cuddalore.

2. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.2,44,000/- as compensation, the break-up details of which is as under :-



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|                                 |   |                     |
|---------------------------------|---|---------------------|
| Pain and sufferings             | : | Rs. 25,000/-        |
| Extra nourishment               | : | Rs. 5,000/-         |
| Cost of Attendant Charges:      | : | Rs. 5,000/-         |
| Loss of earnings                | : | Rs. 9,000/-         |
| Permanent disablement           | : | Rs.1,25,000/- (60%) |
| Loss of future earning capacity | : | Rs. 75,000/-        |
|                                 |   | -----               |
| Total                           | : | Rs.2,44,000/-       |
|                                 |   | -----               |

3. Challenging the same, the insurance company has filed this appeal contending that the award passed is excessive and unreasonable.

4. Notice has been served on the owner as well as the claimant and the matter is pending since 2006. They have not been represented before this Court.

5. It is the contention of the learned counsel for the appellant/insurance company that when the Tribunal has awarded a sum of Rs.1,25,000/- towards 60% permanent disablement, further award of Rs.75,000/- towards loss of earning capacity, should have been avoided and, accordingly, the compensation should be proportionately reduced.

6. In order to appreciate the contention raised by the learned counsel for the appellant, it is necessary to find out the nature of injury, period of treatment, percentage of disablement and the impact of the disablement on the earning capacity of the claimant.

7. It is stated in the claim petition that the injured Lakshmi was aged 59 years; is a self-employed working as milk and curd vendor. It is stated that the injured was earning a sum of Rs. 5,000/- p.m. Immediately after the accident, she had been admitted in the Government Hospital, Panruti. After giving first aid, the injured was treated as inpatient from 09.06.2003 to 12.06.2003 in the hospital. The X-ray report indicated that she had suffered fracture of rib bones 3, 8, 9 and 10 in the right side chest. The Doctor has certified that there had been malunion and there had been disfigurement and there is restriction in the movement and, accordingly, assessed the disability at 60%.

8. The Tribunal, fixing the daily income at Rs.50/- quantified the monthly income at Rs.1,500/-. The Tribunal, finding that the claimant had fracture on the right side chest and considering her avocation, where the injured is required to



carry curd and milk over her head, which would be difficult, considering the nature of injury and having regard to the disablement, awarded a sum of Rs.9,000/= as loss of earnings for a period of six months.

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9. As contended by the learned counsel for the appellant when the Tribunal has already awarded compensation of Rs.1,25,000/- under the head permanent disablement, since the injured would have had difficulty in moving atleast for a period of six months, the further compensation awarded under the head loss of earning capacity at Rs.75,000/- seems to be excessive. Even though the award under both heads is permissible, however, this Court is of the considered opinion that the compensation awarded under the head loss of future earning capacity could very well be clubbed under the head loss of earning. Further, it is to be pointed out that the Tribunal has not considered the future prospective increase in income of the claimant.

10. Further award of Rs.25,000/- under the head pain & suffering, Rs.5,000/- towards extra nourishment of Rs.5,000/- and Rs.5,000/- towards cost of attendant cannot be said to be excessive or unreasonable. Accordingly, this Court confirms the compensation awarded under the other heads.

11. For the reasons aforesaid, this appeal is dismissed confirming the order passed by the Tribunal. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

12. The appellant/Insurance company is directed to deposit the entire award amount along with interest @ 7.5% per annum from the date of petition till the date of deposit, as ordered by the Tribunal, 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 judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi2/GLN



To

1. Motor Accidents Claims Tribunal  
(Principal Sub-Judge), Cuddalore.

2. The Section Officer, VR Section,  
High Court, Madras.  
(+2 copies)

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