

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.416 of 2017
and C.M.P.No.2868 of 2017

M/s.The Oriental Insurance Co. Ltd.,
No.687, Vallai Pachappan Street,
Kancheepuram

By its Divsional Officers ... Appellant / 2nd Respondent
versus

1. Mari ... 1st respondent/petitioner
2. P.Murugesan ... 2nd respondent/1st
respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2003 made in M.C.O.P.No.537 of 1985, on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Chengalpet.

For Appellant : Mr.M.Rajasekar

JUDGMENT

Whether compensation in a Motor Vehicle Accident case is payable to a claimant on both heads, viz., loss of earning/earning capacity as well as permanent disability, is the issue raised in this appeal.

2. The claimant Mani, aged about 35 years, an agricultural labour, earning a sum of Rs.300/- p.d., met with an accident on 28.04.1985 and sustained injuries. Hence, he filed a claim petition in in M.C.O.P.No.537 of 1985 before the Motor Accident Claims Tribunal (Principal Sub Judge), Chengalpet, claiming compensation of Rs.1,50,000/-.

2.1. As against the claim made, the Tribunal has awarded the compensation of Rs.1,41,100/- payable with interest at the rate of 9% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Transport expenses	-	Rs.	600/-
Extra nourishment	-	Rs.	500/-
Pain and sufferings	-	Rs.	20,000/-

Permanent disability	-	Rs. 50,000/-
Loss of earning capacity	-	Rs. 70,000/-
Total	-	Rs.1,41,100/-

2.2. Challenging the quantum of compensation as excessive, this appeal has been filed by the Insurance Company.

3. According to the claimant, there had been a crush injury over the left hand and there is amputation of one finger in the right hand apart from injuries over the stomach and head.

3.1. Photographs have been filed to show the nature of crush injury. Furthermore, the disability has been assessed at 50%.

4. The learned counsel for the appellant submitted that when compensation has been awarded for permanent disability, then there cannot be further award for loss of earning capacity. This contention is not correct in view of the judgment of the Supreme Court of India, rendered in Civil Appeal Nos.4816-4817 of 2013 (Arising out of SLP (C) Nos. 15531-15532 of 2007) (S. Manickam Versus Metropolitan Transport Corp. Ltd., in which, it has been held as under, after referring the supporting judgments and after disagreeing with the full bench judgment of the madras high court.

"9) This Court, in Ramesh Chandra vs. Randhir Singh and Others, 1990 (3) SCC 723, has categorically held that compensation can be payable both for loss of earning as well as disability suffered by the claimant.

10) In addition to the same, in B. Kothandapani vs. Tamil Nadu State Transport Corporation Limited, (2011) 6 SCC 420, this Court (speaking through one of us) after considering the Full Bench decision of the Madras High Court in Cholan Roadways (supra), disagreed with the said view and granted separate compensation under the head permanent disability even after grant of compensation under loss of earning/earning capacity. The following conclusion is relevant:

"14. In Ramesh Chandra v. Randhir Singh while considering award of compensation for permanent disability (right foot amputated) caused by the accident under Section 110-B of the Motor Vehicles Act, 1939 which is similar to Section 168(1) of the Motor Vehicles Act, 1988, this Court upheld the award of compensation under the separate head of pain, suffering and loss of enjoyment of life, apart from the head of

loss of earnings. The discussion and ultimate conclusion are relevant which read as under:

"7. With regard to Ground 19 covering the question that the sum awarded for pain, suffering and loss of enjoyment of life, etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. If money be any solace, the grant of Rs. 20,000 to the claimant represents that solace. Money solace is the answer discovered by the law of torts. No substitute has yet been found to replace the element of money. This, on the face of it appeals to us as a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprivation of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself. For these reasons, we are of the considered view that the contentions raised by the truck owner appellant in that behalf

must be negatived and we hereby negative them."

15. It is true that the compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature. For example, take the case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others."

Therefore, the contention that the award cannot be separately given under both the head, i.e. on the head of permanent disability and the loss of earning capacity, is not correct.

5. Therefore, the award cannot be said to be unreasonable and hence, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 30.09.2003 passed in M.C.O.P.No.537 of 1985, by the Motor Accident Claims Tribunal (Principal Sub Judge), Chengalpet.

6. The Insurance Company shall deposit the entire amount of compensation along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

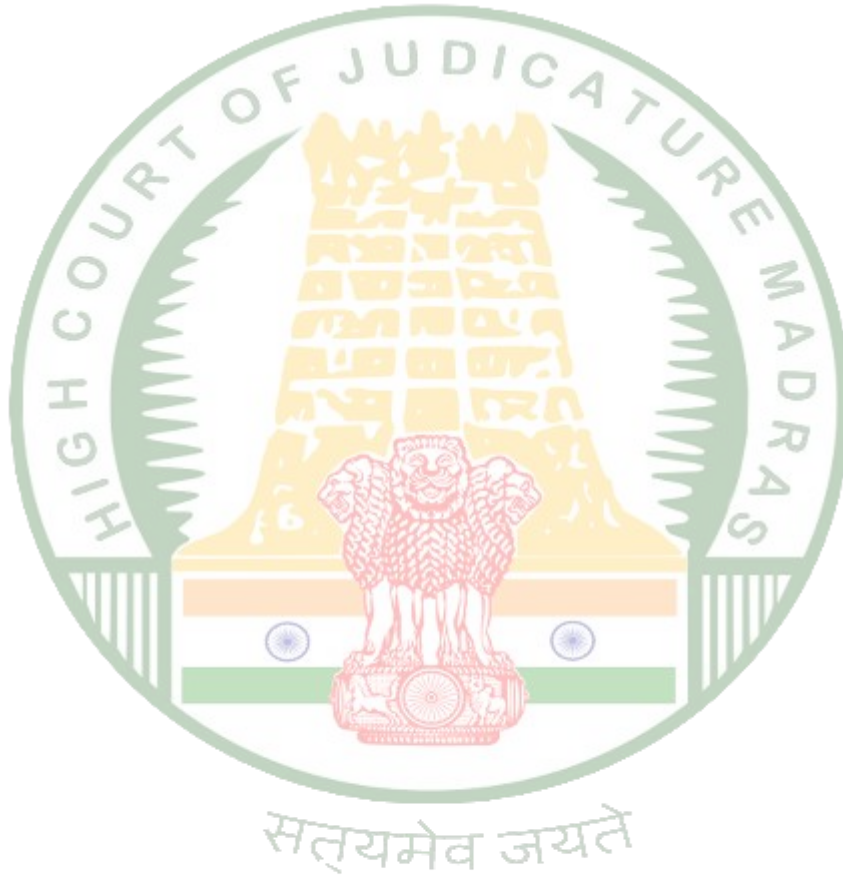
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To

1. The Motor Accident Claims Tribunal
(Principal Sub Judge), Chengalpet.

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