

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM :

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A. No.1294 of 2011

and

M.P. No. 1 of 2011

The United India Insurance Co. Ltd.,
826, Tarapore Towers
Anna Salai
Chennai - 600 00

... Appellant/R2

vs.

1. R. Srinivasan

... R1/Petitioner

2. D. Manoharan

... R2/R1

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree dated 26.11.2010 made in M.C.O.P No. 1444 of 2008 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For appellant : Mr. S. Arun Kumar

For respondents : M/s. M. Malar

JUDGMENT

The second respondent Insurance Company is the appellant herein. For the sake of convenience the parties are referred to as per their rank in the Tribunal.

2. The appeal is filed against the award of compensation of Rs.1,09,500/- to the injured, who sustained fracture of little finger in the accident. The Tribunal awarded the compensation of Rs.1,09,500/- under the following heads :

Sl. No.	Heads	Amount granted
1.	Loss of earning - 2 months	Rs. 30,000.00
2.	Transport to hospital	Rs. 2,000.00
3.	Extra Nourishment	Rs. 5,000.00

4.	Damage to clothing	Rs. 1,000.00
5.	Medical Expenses	Rs. 1,500.00
6.	Pain & Sufferings	Rs. 10,000.00
7.	Permanent Disability	Rs. 60,000.00
	Total	Rs. 1,09,500.00

3. The Tribunal has having found the driver of the offending vehicle i.e. mini lorry was under alcohol at the time of the accident and having found the policy condition was hence violated by allowing the lorry to be driven by the person after consuming alcohol applied pay and recovery theory and directed the 2nd respondent/ insurer to pay the compensation to the claimant and to recover the same from the owner first respondent.

4. The Tribunal has awarded a compensation as above stated, by accepting the petitioner's case that he was, at the time of accident, working as Insurance Consultant in LIC of India and he was earning a sum of Rs.15,000/- per month and due to the injuries he was prevented from attending to his work for two months and sustained loss of income of Rs.30,000/- and the medical expenses incurred by the petitioner is Rs.1500/- vide Ex.P7 - medical bills. Regarding the disability, the Tribunal relied on the oral evidence of PW-2 Dr. Thiagarajan and his disability certificate Ex.P13, wherein the permanent disability sustained by the injured was assessed at 35%. But the Tribunal has fixed the permanent disability at 30% and awarded a compensation of Rs.60,000/- for the same.

5. The main grievance raised herein is the degree of disability fixed as 30% and Rs.60,000/- awarded for loss of income during treatment period is too high and disproportionate to the nature of the injuries sustained by the claimant. It is argued by the learned Standing Counsel for the Insurance Company that the disability is assessed at 30% without duly considering the nature of the injury and the nature of the avocation of the claimant and the impact of the disability upon him in carrying out the same and the same is above all against the medical guidelines issued for the manner of assessment of disability. The learned Standing Counsel has by producing a copy of the 'Manual for Doctors to evaluate permanent physical impairment' and by relying on Schedule I to IV and Section 4 of the Workmen's Compensation Act, 1923 argued that the percentage of permanent disability for the fracture sustained in the little finger cannot exceed 2% or 7%. The learned Standing Counsel has also taken this Court to the relevant pages in the Manual as well the relevant portion of the Schedule I to IV of the Workmen's Compensation Act.

6. This Court, considering the nature of the injury and considering the method of evaluation of permanent disability as per the medical manual and the Workmen's Compensation Act and considering the nature of avocation of the claimant and the impact of his fracture on the little finger to carry on his job as LIC Consultant, is inclined to hold that the disability sustained is such that there is no functional disability caused to the claimant due to the fracture and it is not likely to affect his job, so as to complaint loss of future earning power. That being so, the assessment of permanent disability at 35% by PW-2 Doctor and 30% by the Tribunal is on the higher side and without any basis. The permanent disability can be reasonably fixed as 7% and the compensation awarded under the heading permanent disability at Rs.2000/- per each percentage, modified as Rs.14,000/-. The same principle can be applied to the petitioner's case regarding the loss of earning during the treatment period and a sum of Rs.30,000/- awarded, is in the opinion of this Court too high and is reduced to Rs.10,000/-. Accordingly, the award of compensation is modified as follows :

Sl. No.	Heads	Amount granted
1.	Loss of earning - 2 months	Rs. 10,000.00
2.	Transport to hospital	Rs. 3,000.00
3.	Extra Nourishment	Rs. 5,000.00
4.	Damage to clothing & articles	Rs. 1,000.00
5.	Medical Expenses	Rs. 2,000.00
6.	Pain & Sufferings	Rs. 15,000.00
7.	Permanent Disability	Rs. 14,000.00
	Total	Rs. 50,000.00

The compensation is payable with interest at 7.5% per annum.

7. In the result, the C.M.A. is partly allowed and the compensation of Rs.1,09,500/- is reduced to Rs.50,000/- payable with interest at 7.5% per annum from the date of claim petition till the date of deposit. In the event of the entire amount being already deposited, the claimant is permitted to withdraw the compensation with proportionate interest and cost and the Insurance Company is

permitted to withdraw the excess amount, if any, lying in the court deposit, both by way of separate cheque petitions before the Tribunal. The Insurer is given the right to recover the compensation amount from the first respondent owner by filing execution proceedings in the MCOP. Consequently, the connected M.P is closed. No costs.

avr

Sd/-
Assistant Registrar (CS-IV)

/True Copy/

Sub-Assistant Registrar

To

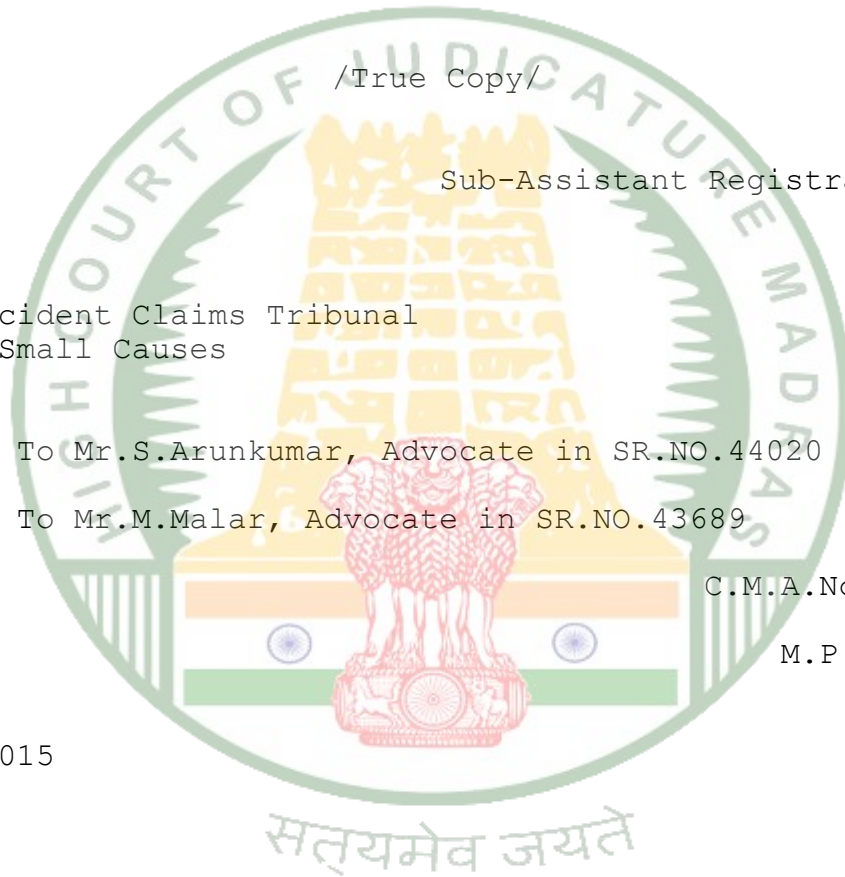
The Motor Accident Claims Tribunal
IV Court of Small Causes
Chennai.

+1 C.C. To Mr.S.Arunkumar, Advocate in SR.NO.44020

+1 C.C. To Mr.M.Malar, Advocate in SR.NO.43689

C.M.A.No.1294 of 2011
and
M.P.No. 1 of 2011

EV(CO)
sd : 17/11/2015



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