

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2015

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THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 195 of 2015

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M.P. No. 1 of 2015

United India Insurance Co.Ltd.,
No. 826, Tarapore Towers, 7th Floor,
Anna Salai, Chennai -2. ..Appellant/ 2nd Respondent

Vs.

1. Chandrasekar
2. V. Munusamy ..Respondents/ Petitioner/
1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 31.10.2014 passed in O.P. No. 494 of 2013 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant :: Mr.D. Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs. 4,65,500/- granted in favour of the 1st respondent, for the injuries sustained by him, in the accident, which occurred on 04.01.2013, when the motorcycle driven by him, was hit from behind, by a lorry, belonging to the 2nd respondent and insured with the appellant, which was driven in a rash and negligent manner.

2. Heard Mr.D. Bhaskaran, learned counsel for the appellant.

3. The only point raised by the learned counsel for the appellant is with regard to the quantum of compensation awarded by the Tribunal.

4. The 1st respondent sustained Grade II compound fracture lateral malleolus right and avulsion fracture G7 right humerus. He underwent surgery for K-wire fixation for fracture of right lateral

malleolus and was treated as an in-patient from 04.01.2013 to 09.01.2013. Again, as per Ex-P4, from 12.01.2013 to 28.01.2013, he was treated as an in-patient in KMC Hospital, during which he underwent surgery for removal of K-wire. Due to the injuries, the 1st respondent could not do any work as he was doing before and therefore, his avocation as a Sales Co-ordinator, got affected.

5. The Doctor, who was examined on the side of the 1st respondent/claimant, before the Tribunal as P.W.2 and who issued Ex-P10, Disability Certificate, determining the disability at 65%, deposed as follows:

Sustained injury to the right lower limb near the ankle joint causing fracture of the lateral malleolus for bone union fixed with K wire and later during the course of treatment the K wire removed at present the fractured bone united in expanded and irregular manner for the traumatic arthritis of the right ankle movements of the right ankle reduced and restricted by 30 degrees on upwards and downwards movements from the normal 45 degrees. Active standing activity causes pain swelling and tenderness. The lacerated injury over the right ankle was cleaned and sutured.

He also sustained avulsion fracture of the greater tuberosity of the right humerus which was conservatively treated at present the bone united in depressed manner causing muscle stiffness of the right shoulder with movement restriction on upwards and rotative movements by 30 degrees from the normal 140 degrees. Right shoulder on active use causes pain, swelling and movement restriction."

The Tribunal, based on P.W.2, Doctor's evidence, Exs-P3 and P4, Discharge Summaries, Ex-P8 Medical Bills, Ex-P9, Treatment records, Ex-P10, Disability Certificate and Ex-P11, X-ray and considering the objections raised by the Insurance Company, rightly fixed the disability at 55%, and the same cannot be interfered with. Though there was an option to adopt multiplier method, the Tribunal awarded only Rs. 1,10,000/- @ Rs.2000/- per percentage of disability towards "Loss of Income due to Disability". The amount of Rs.50,000/- awarded each towards "Transportation Expenses" and "Extra Nourishment", though appear to be on the higher side, taking into consideration, the nature of injuries sustained by the 1st respondent and the treatment undergone by him twice and the time taken for recuperating, the above amounts cannot be said to be on the higher side. Similarly, the sum of Rs.1 lakh awarded towards "Pain and Suffering" may also appear to be on the higher side. However, taking into account, two fractures and two surgeries undergone by the 1st respondent, awarding of the said amount is justified. As far

as other heads are concerned, very reasonable amounts have been awarded and warrants no interference. Hence, the award of Rs.4,65,500/- granted by the Tribunal, as compensation, to the 1st respondent is reasonable and the same is confirmed. The rate of interest awarded at 7.5% per annum also stands confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Connected M.P. is closed.

6. The appellant is directed to deposit the entire award amount, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent is permitted to withdraw the entire amount, within a period of two weeks thereafter.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

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To

The MACT (Court of Small Causes), Chennai.

1 cc to Mr.D. Baskaran, Advocate, sr. 7830

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