

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2469 of 2015

M/s United India Insurance Co.Ltd.,
No.19, Andiappa Gramani Street
Royapuram
Chennai

..Appellant/2nd Respondent

-Vs-

1.K.Sudharsan
2. R.Robert Nevel
(R2 remained ex parte in lower Court)

..Respondents/Petitioner/Ist
Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 6.3.2015 made in M.A.C.T.O.P.No.4870 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant :: Mrs.R.Rathna Thara

For Respondents :: Mr.K.Malaikannu for
R1/caveator

JUDGMENT

This appeal at the instance of M/s United India Insurance Company Limited is directed against the impugned award dated 6.3.2015 passed in M.A.C.T.O.P.No.4870 of 2012 with regard to the quantum of compensation.

2. Heard the learned counsel for the appellant.

3. Learned counsel for the appellant-Insurance Company contented that the Tribunal erred in arriving at the total compensation of Rs.6,55,000/- with 7.5% interest per annum to the first respondent-claimant under various heads. According to the learned counsel, the Tribunal erred in fixing the income of the injured at Rs.25,000/- per month and awarding a sum of Rs.75,000/- as loss of income based on Ex.P-12 income and leave certificate without examining the employer. The Tribunal also

failed to note that there was no supporting documents like appointment letter of the employer or pass book statement to prove the claim that he has been working as a Manager and earning regular income. The Tribunal also erred in granting a sum of Rs.1,00,000/- towards pain and suffering when the disability is only partial permanent disability and the award of Rs.75,000/- and Rs.50,000/- towards extra nourishment and transport expenses were without any proof. For all these reasons, the learned counsel sought for interference with the impugned award.

4. This Court is not impressed with the contentions made by the learned counsel for the appellant. It is not in dispute that the first respondent-claimant filed the claim petition seeking compensation of a sum of Rs.7,80,000/-, subsequently restricting to Rs.6,00,000/-, for the injuries sustained in a road accident. According to the first respondent, on 6.3.2012 at about 12.45 hours, when he just started and moved his motorcycle bearing Registration No.TN-18-Y-01 to proceed in front of Door No.459, Subbaiah Watch shop, the auto-rickshaw bearing Registration No.TN-04-AA-5080 owned by the second respondent and driven by one Mr.Siva, came rashly and negligently from behind in the same direction and hit the claimant's right hand, as a result, he suffered grievous injuries. Since the second respondent remained ex parte, the Tribunal, based on the material documents, namely, Ex.P1-FIR and Ex.P3-charge sheet laid against the driver of the second respondent coupled with the evidence of P.W.1, held that the accident occurred only due to the rash and negligent driving of the driver of the second respondent, since strict proof of accident was not necessary, as the claimants were merely to establish their case on the touchstone of preponderance of probability in the light of the ratio laid down by the Apex Court in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009 (1) TNMAC 700. The Tribunal also held that the insurance company has failed to produce any evidence to prove that the injured claimant was responsible for the accident. The said findings, in my considered view, do not require any interference.

5. So far as the percentage of disability sustained by the injured is concerned, the Tribunal took into account the Exs.P5 & P6-discharge summaries and Ex.P16-disability certificate coupled with the evidence of P.Ws.1 & 2 to prove that the injured was admitted to Apollo Hospital, Tondiarpet from 6.3.2012 to 9.3.2012 and again on 20.4.2012 to 22.4.2012 and was operated twice. Accordingly, the Tribunal fixed the percentage of disability sustained by the injured at 40% by holding that the appellant failed to produce any concrete medical evidence to disprove the evidence of P.Ws.1 & 2. The Tribunal also held that since the injured was a B.E., graduate and was working as a Manager in Srinivasa Machine Works, Ambattur and earning a sum

of Rs.25,000/- per month, because of the accident, he was not able to work for about four months due to the fracture in his right hand and ultimately awarded a sum of Rs.1,20,000/- at the rate of Rs.3,000/- for each percentage of disability. Coming to the award of compensation under the heads pain and suffering, extra nourishment, transportation, damage to clothes and attender charges, the Tribunal found that the injured, having sustained fracture in his right hand, compound fracture of grade and also laceration injuries all over the body, was taking treatment for a considerable period, awarded a sum of Rs.1,00,000/-, Rs.75,000/-, Rs.50,000/-, Rs.3,000/- and Rs.50,000/- respectively. This Court is of the view that the said amounts awarded being reasonable, considering the age and the qualification of the injured, require no interference.

6. The Tribunal also awarded a sum of Rs.1,42,000/- for medical expenses, as there was no serious dispute from the appellant. The Tribunal, taking into account that the injured underwent surgery of plate osteosynthesis on 6.3.2012 in Apollo Hospital, Tondiarpet and had to be operated for removal of implant, awarded a sum of Rs.40,000/- as future medical expenses based on Ex.P17 certificate. Likewise, the Tribunal has awarded a sum of Rs.75,000/- towards loss of income on the ground that the injured was not able to attend to his official duties at least for a period of three months on account of the accident. Since the Tribunal has awarded a total compensation of Rs.6,55,000/- based on the oral and documentary evidence let in by the first respondent/claimant without any rebuttal by the appellant to disprove the said claim with cogent evidence, this Court is of the view that the findings of the Tribunal need not be interfered with. Accordingly, the civil miscellaneous appeal is dismissed confirming the judgment and decree of the Tribunal in all respects. Consequently, M.P.No.1 of 2015 is also dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
(IV Court of Small Causes)
Chennai

2. M/s United India Insurance Co.Ltd.,
No.19, Andiappa Gramani Street
Royapuram
Chennai

3.The Section Officer,
VR Setion,
High Court,
Madras.

+1cc to Mr.K.Malaikannu, Advocate, S.R.No.60207

C.M.A.No.2469 of 2015

pur(CO)
srg(28/01/2016)



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