

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 1597 OF 2014

M/s.United India Insurance Co. Ltd.

No.42, Mutt Street, First Floor

Kumbakonam,

Thanjavur District.

...Appellant/2nd Respondent

- Vs -

1. Mr. Saminathan ...1st Respondent/Claimant

2. Mrs. Susila Mathiyalagan ...2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2013, passed by the Motor Accident Claims Tribunal (Subordinate Judge), Ariyalur, made in MCOP No.60 of 2011.

For Appellant : Mr. J.Chandran

For Respondent 1 : Mr. S.Kaithamalai Kumaran

JUDGMENT

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent. There is no representation for the 2nd respondent.

2. The appeal has been filed by the insurer of the vehicle, viz., United India Insurance Company, challenging the award dated 25.4.2013 passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Ariyalur, made in M.C.O.P. No.60 of 2011, fixing the liability on the insurer.

3. It is a case of injuries sustained by the first respondent in an accident that happened on 13.12.2010. On 13.12.2010, at about 07.30 p.m., when the first respondent, Saminathan, was proceeding in his motor cycle on the Kaikatti-Vilangudi Main Road, near Small Bridge, the bus, belonging to

the second respondent, bearing Regn. No.TN-61-4867, coming in the opposite direction, driven in a rash and negligent manner, hit the motor cycle and as a result of the accident, the first respondent suffered severe injuries as well as fractures. The first respondent was initially took treatment at the Government Hospital at Ariyalur and, thereafter, took treatment at the Government Medical College & Hospital at Thanjavur. The first respondent also took treatment at private hospital by incurring an expenditure of Rs.50,000/=. A case was registered against the driver of the bus in Crime No.191/2010 on the file of the Kayarlabad Police Station and is pending before the Judicial Magistrate Court, Ariyalur. The first respondent herein, who suffered the accident and sustained injuries, claimed compensation in a sum of Rs.5,00,000/-.

4. In support of the claim, the first respondent examined himself as P.W.1 and one Dr.Saravanan was examined as P.W.2 and Exs.P-1 to P-9 were marked, the details of which are as follows:-

Ex.P-1	-	First Information Report
Ex.P-2	-	Medical Report
Ex.P-3	-	Accident Report
Ex.P-4	-	CT Scan Report
Ex.P-5	-	Receipt in respect of money paid for CT Scan
Ex.P-6	-	Discharge Summary
Ex.P-7	-	Insurance Certificate of United India Insurance
Ex.P-8	-	Disability Certificate
Ex.P-9	-	X-ray

5. Neither the owner of the vehicle, viz., the second respondent herein, nor the Insurance Company, viz., the appellant herein, examined any witnesses nor marked any documents.

6. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that corroborating evidence in the form of the evidence of P.W.2 has been adduced by the first respondent to prove that the bus was driven in a rash and negligent manner as also the injuries sustained resulting in disability, and also taking into account the documentary evidence and there being no evidence adduced by

the owner of the vehicle/second respondent herein or the insurance company, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus and, therefore, the liability was fixed on the second respondent herein viz., the owner of the bus and consequently the appellant, viz., the insurer of the bus, was directed to compensate the first respondent.

7. Insofar as negligence is concerned, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. The Tribunal, on considering the evidence, both oral and documentary, awarded compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Expenses incurred in Private Hospital	Rs.1,50,000/-
2	Permanent Disability at 32%	Rs.64,000/-
3	Extra Nourishment	Rs.30,000/-
4	Transportation Expenses	Rs.30,000/-
5	Pain & Suffering	Rs.30,000/-
6	Future Medical Expenses	Rs.71,000/-
	Total	Rs.3,75,000/-

In all, the Tribunal awarded a sum of Rs.3,75,000/- towards the claim as made by the first respondent along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of payment.

9. The only serious issue raised by the appellant/insurance company in the present appeal is that though the claimant himself has pleaded that he spent a sum of Rs.50,000/= towards medical expenses, however, the Tribunal has awarded Rs.1,50,000/= towards medical expenses. It is further contended that the award of a sum of Rs.1,50,000/= towards medical expenses is also on the higher side, as there is no evidence in relation to the actual medical expenses incurred by the claimant. Further, a sum of Rs.71,000/= has been awarded towards future medical expenses. It is the submission of the learned counsel for the appellant that there is no evidence to

support the necessity for the award of future medical expenses.

10. The submission, as made by the learned counsel for the appellant on the above two issues deserves to be sustained. This Court finds force in the said submission, as it is evident from the records that the claimant himself has admitted that he spent only a sum of Rs.50,000/= towards medical expenses. In such view of the matter, this Court directs that the claimant would be entitled to a sum of Rs.50,000/= towards medical expenses instead of Rs.1,50,000/= as awarded by the Tribunal. Further, there is also no evidence to support the award of future medical expenses, as it is evident from the documents that the injuries sustained by the appellant are only bruises, abrasion and fracture, which, by no stretch of imagination would involve future medical treatment. Accordingly, the compensation of Rs.71,000/= awarded under this head is deleted.

11 The compensation granted under other heads, viz., permanent disability, extra nourishment, transport expenses and pain and suffering appears to be just and reasonable. The learned counsel appearing for the appellant has also no serious objection on the compensation granted under those heads. There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a.

12. Accordingly, the award of the Tribunal is modified as under :-

Sl. No.	Head	Amt. granted by the Tribunal	Amt. granted by this Court
1	Expenses incurred in Private Hospital	Rs.1,50,000/-	Rs.50,000/-
2	Permanent disability at 32%	Rs.64,000/-	Rs.64,000/-
3	Extra Nourishment	Rs. 30,000/-	Rs.30,000/-
4	Transport expenses	Rs.30,000/-	Rs.30,000/-
5	Pain & Suffering	Rs.30,000/-	Rs.30,000/-
6	Future Medical Expenses	Rs.71,000/-	---
	Total	Rs.3,75,000/-	Rs.2,04,000/-

13. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is reduced to Rs.2,04,000/- from Rs.3,75,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) This Court vide order dated 9.7.2014 had directed the appellant to deposit the entire award amount together with interest and costs less the amount already deposited.

(iv) The claimant is permitted to withdraw the amount as ordered by this Court above.

(v) The appellant insurance company is at liberty to withdraw the balance amount after adjusting the award amount as ordered above.

(vi) There shall be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

GLN

To

The Subordinate Judge
(Motor Accident Claims Tribunal)
Ariyalur.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.

1 CC to Mr. J.Chandran, Advocate SR.No. 44795

1 CC to Mr. S.Kaithamalai Kumaran, Advocate SR.No. 45629

C.M.A. NO. 1597 OF 2014

SV (CO)
PSI (15.10.2015)