IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CMA.No.1336 of 2016
CMP.No.10350 of 2016

United India Insurance Co. Limited
Chennai-6 Appellant

Vs

1. N.Srinivasan
2. Babu Mohamed. S. Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 25.11.2014 and made in MCOP.No.3431 of 2013 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai.

For Petitioner : Mr.D.Bhaskaran

For Respondents : Ms.M.Malar-R1

ORDER

Questioning the liability as well as the quantum of compensation, the Appellant Insurance Company, who is the 2nd Respondent in the claim petition, has filed this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The 1st Respondent herein had moved the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai with a claim petition in MCOP.No.3431 of 2013, claiming a sum of Rs.6 lakhs towards compensation for

the injuries sustained by him in a road traffic accident said to have taken place on 17.05.2013, involving the car bearing Reg.No.TN 32 L 2521 belonging to the 2nd Respondent herein. The owner of the vehicle being the 1st Respondent before the Tribunal, had not contested the claim petition. The Appellant Insurance Company being the 2nd Respondent alone had contested the claim petition.

3. The Tribunal, based on the evidences, both oral and documentary available on record, had proceeded to award a total sum of Rs.3,93,158/- as compensation under the following heads:-

S.No	Category	Award Amount (Rs.)
1	Disability	120000
2	Pain and Suffering	50000
3	Extra Nourishment	75000
4	Transportation to Hospital	15000
5	Damages to Clothes	3000
6	Attender Charges	10000
7	Loss of Earning	60834
8	Medical Expenses	34324
9	Loss of Amenities	25000
Total Compensation		**393158**

4. The learned counsel for the Appellant would contend that the 2nd Respondent was not at all the owner of the car and in fact, the car bearing Reg.No.TN 32 L 2521 was not at all insured with the Appellant Insurance Company. It was also contended that the car itself was not involved in the accident said to have taken place on 17.05.2013. The contention made by the learned counsel for the Appellant seems to be ambiguous in nature and he is not supposed to take a dual stand. Once he has opted to take a plea that the car

was not insured with the Appellant Insurance Company, he cannot be allowed to take another stand entirely contrary to the previous one, saying that the car was not at all insured with them. This aspect was considered by the Tribunal and was rightly rejected. The contention of the learned counsel for the Appellant, in this aspect, need not therefore be reconsidered and hence, the findings of the Tribunal does not require any disturbance.

5. Secondly, coming to the question of quantum of compensation, it appears from the records that the 1st Respondent claimant had sustained abrasion over his right frontal region, another abrasion over the lower chin and due to the impact on his head as well as his face, he had lost upper incisor and further, he had also sustained deep abrasion along with multiple small lacerations over right foot, as revealed from Ex.P2 OP Record. Ex.P3 Discharge Summary would also go to substantiate this fact.

6. It is to be noted that the 1st Respondent injured was aged about 48 years at the time of the occurrence. Further, from the evidence of PW.2 Dr.M.Saravanabavanantham and PW.3 Dr.T.S.Kalkura, this court understands that the 1st Respondent injured was clinically examined by them and they have also issued the disability certificates under Ex.P9 and Ex.P11 respectively and accordingly, they had assessed the disabilities suffered by the 1st Respondent/ claimant. Therefore, the Tribunal had assessed the total disability at 40%. Accordingly, at the rate of Rs.3000/- per percentage, for 40%, a sum of Rs.1,20,000/- was awarded towards disability by the Tribunal. This court finds

that this amount need not be modified and therefore, it can be maintained.

7. In so far as the pain and suffering is concerned, the Tribunal had awarded a sum of Rs.50,000/-. Since it seems to be disproportionate as well as on the higher side, it can be reduced to Rs.30,000/-. Towards extra nourishment, this court finds that it would be proper to grant a sum of Rs.10,000/- instead of Rs.75,000/- as awarded by the Tribunal. Towards the transportation expenses, this court finds that it would be appropriate to grant a sum of Rs.10,000/- instead of Rs.15,000/- as awarded by the Tribunal.

8. With reference to the damage to clothes, a sum of Rs.3000/- was awarded by the Tribunal and this amount can be maintained without any alteration. Towards the attender charges, a sum of Rs.10,000/- was awarded and it can also be maintained without any modification.

9. Since the 1st Respondent claimant had sustained severe injuries, the Tribunal taking into consideration of the long period of treatment, i.e. about six months, had granted Rs.60,834/- towards the loss of income, but considering the submissions made by the learned counsel for the Appellant, this court finds that the loss of income can be restricted only for three months and accordingly, a sum of Rs.30,417 can be awarded.

10. With regard to the medical expenses, as it is revealed from Ex.P4 (series), a sum of Rs.34, 324/- was granted by the Tribunal and this court finds that this amount could also be maintained, as it is supported by bills and vouchers. Besides this, the Tribunal also awarded a sum of Rs.25,000/-

towards loss of amenities and this amount can also be maintained without any modification. Therefore, this court finds that the award passed by the Tribunal to the extent of Rs.3,93,158/- can be reduced to Rs.2,72,741/-, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability	120000
2	Pain and Suffering	30000
3	Extra Nourishment	10000
4	Transportation to Hospital	10000
5	Damages to Clothes	3000
6	Attender Charges	10000
7	Loss of Earning	30417
8	Medical Expenses	34324
9	Loss of Amenities	25000
Total Compensation		**272741**

11. In the result, this Civil Miscellaneous Appeal is partly allowed and in all, the 1st Respondent claimant is entitled to get a sum of Rs.2,72,741/- (Rupees two lakhs seventy two thousand seven hundred and forty one only) as total compensation with interest at 7.5% p.a. from the date of the petition till the date of realisation. The Appellant Insurance Company is directed to deposit the said amount with interest at 7.5% p.a. from the date of the petition, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the 1st Respondent claimant is entitled to withdraw the entire compensation along with accrued interest and costs, without filing any formal application seeking permission. However, there shall be no order as to costs.

13.07.2016

Index:Yes/No
Web:Yes/No
Srcm

T.MATHIVANAN,J.

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CMA.No.1336 of 2016

13.07.2016