

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2469 of 2016

and

C.M.P. No.17470 of 2016

United India Insurance Company Ltd.,
134, Silingi Buildings 4th Floor,
Greens Road, Chennai-6.

... Appellant/2nd
Respondent

Versus

1.G.Vijay Ganesh
2.S.Nagaraj
(R2 remained exparte)

... Respondents/Petitioners &
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 16.09.2014 made in M.C.O.P. No.143/2013 on the file of the Motor Accidents Claims Tribunal, (V Judge, Small Causes Court), Chennai.

For appellant : Ms.R.Vijayakamala

For respondents : Ms.M.Malar for R1

J U D G M E N T

The United India Insurance Company Ltd. has brought this appeal, challenging the correctness of the impugned award dated 16.09.2014 made in M.C.O.P. No.143/2013 on the file of the Motor Accidents Claims Tribunal, (V Judge, Small Causes Court), Chennai, awarding a sum of Rs.4,45,000/- as against the claim of Rs.10,00,000/-.

2.It is the case of the claimant that on 13.11.2012 at about 02.30 p.m., while he was riding his Honda Activa bearing Registration No.TN-01-Z-8980 at Rithordon Road near Dental Hospital, an auto bearing Registration No.TN-10-AH-4012, driven by its driver in a rash and negligent manner, came from North to South direction and hit the Honda Activa. Due to the said accident, the claimant sustained grievous injuries. According to the claimant, the accident had happened due to the rash and negligent driving of the driver of the above said auto.

3.Learned counsel appearing for the appellant would submit that the learned Tribunal accepting the disability certificate certifying 65% disability, without even properly analysing the nature of injuries, has arrived at a sum of Rs.1,30,000/- towards disability at the rate of Rs.2,000 per percentage, which is not only un-reasonable and also exorbitant. Adding further, she would submit that when the discharge summary marked as Ex.P3, issued by the Appollo First Med Hospitals, candidly shows that the claimant has sustained dislocation of right ankle and nasal bone fracture for which he was taken treatment as inpatient only for four days, granting a sum of Rs.1,30,000/- under the said head 'disability' is wholly un-reasonable. Continuing her arguments, it is submitted that there is no iota of proof from the side of the claimant to show that he was continuously going to any hospital for further treatment and in the absence of any evidence, the learned Tribunal has fixed a sum of Rs.50,000/- towards loss of amenities. Although record shows that the claimant has incurred medical expenses at Rs.1,20,000/- without even disability, learned Tribunal has un-reasonably accepted the claim of medical expenses for a sum of Rs.1,20,000/- without any suspicion. Therefore, the amount awarded under the heads 'disability' and 'loss of amenities' are liable to be interfered with.

4.Learned counsel appearing for the claimant would submit that the claimant was a final year B.E. student studying in Panimalar Engineering College, Chennai. While he was riding his Honda Activa, an auto hit the said two wheeler and as a result, he sustained grievous injuries. Immediately thereafter, he was rushed to the Appollo First Med Hospital, Chennai. Subsequently, an F.I.R. was also registered in Crime No.563/T3/12 against the driver of the Auto on the file of D6 Anna Square Traffic Investigation, which was marked as Ex.P1. Learned Tribunal, accepting the evidence of P.W.1/the claimant, which was corroborated by F.I.R. marked as Ex.P1, clearly showing that the accident had occurred due to the rash and negligent driving made by the driver of the Auto, has rightly answered for the cause of the accident. After holding that the driver of the auto was responsible for the accident, it rightly came to the conclusion that the Insurance Company, which has got the valid insurance coverage on the offending auto, was saddled with the liability.

4.1.Secondly, while coming to the quantum of compensation, the learned Tribunal, keeping in mind that the claimant was an Engineering Student and on the basis of the multiple injuries namely, fracture of both bone right ankle, fracture of medial malleolus, for which screw fixation was done, latimalleolus and fibula, for which plate screw fixation was done and nasal bone fracture, which was recorded by the Doctor in the course of

treatment given in the Appollo First Med Hospital, has come to the conclusion that although the claimant was taking treatment for a period of four days from 13.11.2012 to 16.11.2012, thoroughly examining the evidence of doctor, who was also examined as P.W.2, finding that the claimant also underwent surgery and accepting the disability at 65%, while proceeding to award compensation, it has wrongly fixed only Rs.2,000/- per percentage for 65% disability. Therefore, the contentions made by the learned counsel for the Insurance Company that the learned Tribunal has un-reasonably fixed Rs.1,30,000/- under the head 'disability' is far from acceptance.

5.I also agree with the reply given by the learned counsel for the claimant. When the claimant was pursuing his B.E. in Panimalar Engineering College, on 13.11.2012, while riding his Honda Activa, hit by the offending auto. Resultantly, he barely sustained serious injuries. Immediately, he was rushed to the Appollo First Med Hospital and he was taken treatment from 13.11.2012 to 16.11.2012. Moreover, he also underwent a surgery on 14.11.2012, thereby, ORIF right ankle was done. Since the multiple injuries mentioned supra has deprived the usual activities of the claimant, the learned Tribunal has come to the conclusion that even after the treatment, he cannot climb stairs, finds difficulty to walk and stand for long hours, accepting the evidence of the Doctor, who was examined as P.W.2, deposed that the claimant has sustained fracture of both bone right ankle, fracture medial malleolus, for which screw fixation was also done in addition thereof he also sustained latimalleolus and fibula, for which plate screw fixation was also done, nasal bone fracture, bones mal-united and in view of DFPF 60 degrees stood limited, which has restricted his normal walking and limping, has rightly assessed the disability of the claimant at 65%. Accordingly, accepting the disability certificate issued by the Doctor, which was marked as Ex.P11, the learned Tribunal has arrived at 65% of disability at the rate of 2,000/- per percentage of disability and awarded a sum of Rs.1,30,000/-.

5.1.Since he has also undergone surgery for fixing of screw and naturally for removal of the same, after some time he has to visit the hospital and again he should undergo one more surgery, the learned Tribunal has awarded a sum of Rs.40,000/- towards future medical expenses. Therefore, this Court is not inclined to entertain the impugned award passed by the learned Tribunal, as the same cannot be construed as un-reasonable or exorbitant.

6.Accordingly, the Civil Miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

7. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vga

To

1. The V Judge, Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Ms.R.Vijayakamala, Advocate, S.R.No.64856

C.M.A. No.2469 of 2016

GMI (CO)
CA(09/12/2016)

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