IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.802 of 2015 & 2696 of 2016

C.M.A.No.802 of 2015

United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
4th floor, Greams Road,
Chennai - 600 006 .. Appellant/2nd Respondent

versus

1. M.Ashok Kumar ..1st Respondent/Petitioner

2. Mohammed Irfnullah ..2nd Respondents/1st Respondent

C.M.A.No.2696 of 2016

M.Ashok Kumar .. Appellant/Petitioner

versus

1.Mohammed Irfnullah ..1st Respondent/Respondent

2. United India Insurance Co. Ltd.,
No.134, Silingi Buildings,
4th floor, Greams Road,
Chennai - 600 006.
(R1 remained exparte before
Tribunal his presence may be
dispensed with)
..2nd Respondent/Appellant

Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.06.2014 passed in M.A.C.T.O.P. No.4666 of 2012 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes), Chennai.

For appellant in C.M.A.No.802 of 2015
& R2 in C.M.A.2696 of 2016 : Mr.P.Sankaranarayanan

For R1 in C.M.A.No.802 of 2015
& appellant in C.M.A.No.2696
of 2016 :Mr.F.Terry Chella Raja,

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals, have been filed against the judgment and decree dated 27.06.2014 made in M.A.C.T.O.P.No.4666 of 2012 on the file of the Motor Accident Claims Tribunal (Court of IV Small Causes) at Chennai.

2.The United India Insurance Company has filed C.M.A.No.802 of 2015 questioning the quantum of compensation of Rs.4,85,000/- awarded in favour of the claimant herein. The claimant has filed C.M.A.No.2696 of 2016 seeking enhancement of compensation.

3.Learned counsel appearing for the Insurance Company would submit that the Tribunal without considering the fact that the claimant had taken treatment only at Government Hospital, has erred in awarding a sum of Rs.1,00,000/- towards medical expenses. He would further submit that when the Tribunal has fixed the monthly income of the claimant at Rs.5,000/-, without any proof to show that the income of the claimant was Rs.6,000/-, it has erred in awarding a sum of Rs.50,000/- towards loss of earning for the period of four months instead of awarding a sum of Rs.20,000/- and therefore, the same needs interference.

4. On the other hand, learned counsel appearing for the claimant would submit that when the claimant was walking on the road at Pudhupet, L.G.Salai, the offending motor cycle bearing Registration No.TN 05 AK 6070 coming from East to West direction in a rash and negligent manner hit against the poor pedestrian/claimant, as a result, the claimant, who was eking out his livelihood by doing Sofa Lining and was earning a sum of Rs.6,000/- towards monthly income, badly sustained multiple injuries all over his body. Immediately after the accident, he was admitted in the Government General Hospital, Chennai on 15.08.2012 as in-patient. After taking treatment, he was discharged on 13.09.2012 and during this period of treatment, plates and rods were implanted in his leg. Moreover, he has also undergone surgery on 27.08.2012. In support of his submission, he has relied upon Ex.P.3/discharge summary, which shows that the claimant has underwent surgery for implanting plates and rods in his left leg.

4.1.He would further submit that even after discharge from the hospital, he was undergoing physiotherapy treatment for a period of 8 months. Yet another discharge summary marked as Ex.P4 shows that he was again re-admitted as in-patient from 25.05.2013 to 17.06.2013 for further treatment. After discharge from the hospital, again he was re-admitted in the same hospital on 07.08.2013 and after taking long treatment, he was discharged on 21.08.2013. Even after the discharge from the hospital, the claimant was taking treatment in the private hospital. Due to the fracture in both legs, he was not able to walk, stand and climb steps and moreover as he is doing his avocation as Sofa Liner by using his two wheeler, pursuant to the accident, he is not able to ride any bicycle or two wheeler and not even lift any weight. That apart, he was unable to sit properly and squat on the floor.

4.2.Therefore, the Tribunal, after analyzing the disability certificate issued by Doctor, who was examined as P.W.2 and issued Ex.P9/disability certificate certifying 65% partial and permanent disability, ought not to have reduced the same at 60%. Moreover, the Tribunal has wrongly fixed Rs.2,000/- per percentage of disability for 60% partial and permanent disability, which comes to Rs.1,20,000/-. He would further submit that when this Court has already settled the issue on the question of fixing the disability at Rs.3,000/- per percentage of disability in the case of National Insurance Company Limited v. G.Ramesh reported in 2013 (2) TNMAC 583 (Madras), the Tribunal has fixed only Rs.2,000/- per percentage. Moreover, as per the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC) wherein it has been held that 50% of the actual income should be added towards future prospects, if the victim was below 40 years, the Tribunal has not added any amount towards future prospects and therefore, the same needs enhancement.

5.A perusal of the records would show that on three occasions, the claimant has been admitted as in-patient in Government General Hospital, Chennai namely from 15.08.2012 to 30.09.2012, 25.05.2013 to 17.06.2013 and 07.08.2013 to 21.08.2013. Exs.P3 and P4 clearly show that he has undergone surgery on 27.08.2012 for implanting plates and rods and he underwent another surgery on 08.06.2013. This Court, keeping in mind that for a period of one long year, he was not able to do his work and he had undergone two surgeries for the multiple injuries sustained by him, is inclined to resort to the application of multiplier method.

5.1.The Tribunal, without considering the fact that the claimant has claimed a sum of Rs.6,000/- as monthly income, has fixed only Rs.5,000/- as notional monthly income without there being any proof to show his income. But the learned counsel appearing for the injured/claimant has argued that when the claimant is doing Sofa Lining work and earning a sum of Rs.6,000/- per month and a claim has also been made for the said amount, the Tribunal ought to have fixed Rs.6,000/- as notional monthly income of the claimant. Considering his submissions, this Court is inclined to fix a sum of Rs.6000/- as the notional monthly income.

5.2.With regard to the head 'future loss of earning', the Tribunal has fixed only a meagre sum of Rs.1,00,000/- without any basis. As the claimant had undergone two surgeries for the multiple injuries sustained by him, this Court is inclined to modify the amount fixed under the head 'future loss of earning'. On this score, this Court, fixing the notional monthly income of the claimant at Rs.6,000/- and adding 50% of the said income towards future prospects, as per the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC) is inclined to fix 20% towards permanent disability. As the Tribunal has fixed only Rs.1,00,000/- under the above head, this Court considering the nature of injuries sustained by the claimant, applying multiplier 16%; is inclined to fix the compensation under the head 'future loss of earning' as under:
6000 + 3000 x 12 x 16 x 20/100 = 3,45,600/-

5.3.This Court has already settled the issue on the question of fixing the disability at Rs.3,000/- per percentage of disability in the case of National Insurance Company Limited v. G.Ramesh reported in 2013 (2) TNMAC 583 (Madras). Accordingly, under the head 'disability', this Court, following the above said case, modify the same at Rs.3,000/- per percentage and thus Rs.1,80,000/- is hereby awarded. Considering the operations undergone by the claimant, this Court is hereby fixing Rs.30,000/- towards pain and suffering and under the head 'loss of earning', this Court is awards Rs.24,000/- for a period of four months, as the claimant was not able to attend to his regular avocation. Accordingly, the modified compensation as per the above discussion are as follows:

Disability	Rs.1,80,000/-
Transport to Hospital	Rs. 10,000/-
Extra nourishment	Rs. 15,000/-
Pain and suffering	Rs. 30,000/-

Loss of earning	Rs. 24,000/-
Attender charges	Rs. 15,000/-
Loss of amenities	Rs. 50,000/-
Future loss of earning	Rs.3,45,600/-
Medical expenses	Rs.1,00,000/-
	Rs.7,69,600/-

Therefore, the Insurance Company is directed to deposit the entire award amount including the enhanced amount with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the claimant to withdraw the same on making appropriate application before the Tribunal.

5.4. In the result, the appeal filed by the Insurance Company fails and the same is dismissed and the appeal filed by the claimant stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp

To

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

+ 1 cc to M/s. M. Malar, Advocate Sr.69713
+ 1 cc to Mr.P. Sankaranarayanan, Advocate Sr.70029

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KS(CO)
EU 10.4.17