IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.22.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1387 of 2011
&
M.P.No.1 of 2011

United India Insurance Co. Ltd.,
DO.-26, No.48, First Floor,
Arcot Road, Saligramam,
Chennai - 93. ... Appellant/2nd Respondent

vs.

1.Chandran ... 1st Respondent/Petitioner

2.D.Suresh ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.12.2009 made in MCOP.No.599 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.Varadhakamaraj for R1
Incorrect address - R2

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the Appellant Insurance Company challenging the Award dated 16.12.2009 passed by the Motor Accident Claims Tribunal (Sub Court, Poonamallee) in MCOP.No.599 of 2008.

2. The first respondent/claimant sustained injuries on 01.07.2007 as a result of an accident caused by a vehicle owned by the second respondent and insured with the Appellant. He preferred a claim under Section 163-A of the Motor Vehicles Act seeking compensation for the injuries sustained by him.

3. The Motor Accident Claims Tribunal under the impugned Award directed the Appellant insurance company to pay the first

respondent/claimant a compensation of Rs.1,53,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Disability compensation	70,000/-
Pain and suffering	50,000/-
Extra nourishment	15,000/-
Loss of income during the period of treatment	18,000/-
Total	1,53,000/-

4. The Appellant/Insurance Company has challenged the impugned award on the following grounds namely (a) the Tribunal has erred in holding the driver of the insured auto rickshaw responsible for the cause of the accident, (b) the first respondent/claimant was an occupant in the insured auto and not a third party and hence, he is not entitled to claim compensation from the Appellant who is the insurer of the Auto Rickshaw and (c) the quantum of compensation awarded by the Tribunal under the impugned award is excessive and is not in accordance with Schedule - II of the Motor Vehicles Act.

5. Heard Mr.S.Arun kumar, learned counsel for the Appellant and Mr.K.Varadhakamaraj, learned counsel for the first respondent. The notice sent to the second respondent was returned with the endorsement "incorrect address". Since the second respondent has remained exparte before the Tribunal, notice to the second respondent is dispensed with by this Court.

6. Before the Tribunal, the first respondent/claimant has filed 8 documents which were marked as Ex.A1 to Ex.A8 and two witnesses were examined namely the first respondent/claimant himself as PW1 and the doctor who examined him as PW2. On the side of the Appellant insurance company, neither any document was filed nor any witness examined before the Tribunal.

7. Insofar as the first contention raised by the Appellant/insurance company is concerned, the same has been rightly rejected by the Tribunal for the following reasons:

(a) The FIR (Ex.A1) has been registered only against the driver of the Auto-Rickshaw insured with the Appellant.

(b) The oral evidence adduced by the first respondent/claimant through PW1 and PW2 also reveals that the cause of the accident was solely due to the driver of the insured vehicle.

(c) Based on preponderance of probability, the Tribunal has rightly held the driver of the insured vehicle solely responsible for the cause of the accident.

Hence, the first contention raised by the Appellant is rejected by this Court.

8. Insofar as the second contention raised by the Appellant is concerned, in view of the decision rendered by the Hon'ble Supreme Court in the case of United India Insurance Company Limited vs. Sunil Kumar & Another reported in (2019) 12 SCC 398, the plea taken by the insurance company cannot be accepted. The first respondent/claimant was an occupant in the Auto-Rickshaw insured with the Appellant at the time of the accident. As an occupant of the insured vehicle, the insurer is liable to compensate his claim as held by the aforesaid decision of the Hon'ble Supreme Court. Therefore, the second contention is also rejected by this Court.

9. Insofar as the third contention raised by the Appellant insurance company with regard to the quantum of compensation is concerned, the Tribunal has not awarded compensation in accordance with the structured formula basis as prescribed under Schedule - II of the Motor Vehicles Act.

10. The Tribunal has awarded an excess compensation of Rs.50,000/- towards pain and suffering. Therefore the same is reduced to Rs.30,000/- by this Court which is within the prescribed limits under Schedule - II of the Motor Vehicles Act.

11. The Tribunal has also erroneously awarded a compensation of Rs.15,000/- towards nourishment which the first respondent/claimant is not entitled to under Schedule - II of the Motor Vehicles Act. Accordingly, the same is removed by this Court.

12. Insofar as the disability compensation of Rs.70,000/- awarded by the Tribunal is concerned, the same is confirmed by this Court as it is a just compensation based on the disability certificate (Ex.A7) issued by the Doctor (PW2) who has assessed the disability of the first respondent/claimant at 70%. The said disability compensation is in accordance with Schedule - II of the Motor Vehicles Act.

13. Insofar as the compensation awarded towards loss of income during the period of treatment at Rs.18,000/- is

concerned, the same is also confirmed by this Court, since it is in accordance with Schedule – II of the Motor Vehicles Act.

14. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is reduced from Rs.1,53,000/- to Rs.1,18,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Disability compensation	70,000/-	70,000/-
Pain and suffering	50,000/-	30,000/-
Extra nourishment	15,000/-	---
Loss of income during the period of treatment	18,000/-	18,000/-
Total	1,53,000/-	1,18,000/-

Conclusion:

15. In the result, this Appeal is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The Appellant insurance company is directed to deposit the modified award amount along with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.599 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of MCOP.No.599 of 2008 to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Poonamallee.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 31125
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.30919

C.M.A.No.1387 of 2011

SJ(CO)
GN(21/04/2021)