IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.08.2020
Pronounced On	31.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3668 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

The United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 2. ... Appellant/Respondent 2

Vs.

1.V.S.Saji ...Respondent 1/Petitioner

2.Vanakka Raja ... Respondent 2/Respondent 1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.3671 of 2005 on 11.03.2010 on the file of the learned Motor Accident Claims Tribunal (Small Causes Court - VI Judge) at Chennai.

For Appellant : Mr.J.Chandran

For R1 : Mr.K.Varadha Kamaraj

R2 : Not Ready in Notice

J U D G M E N T

The Insurance Company is the appellant in this Civil Miscellaneous Appeal. It is aggrieved by the impugned Judgment and Decree dated 11.03.2010 passed by the Motor Accidents Claims Tribunal, Chennai (VI Court of Small Causes, Chennai) in M.C.O.P.No.3671 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.9,01,420/- as compensation together with interest at 7.5% p.a. (except for Rs.60,000/- awarded as

compensation towards future medical expenses) from the date of claim petition till the date of deposit, to the 1st respondent/claimant.

3. The Tribunal has concluded that the appellant and 2nd respondents are jointly liable to pay the compensation to the 1st respondent. Since the appellant is the insurer of the accident vehicle of the 2nd respondent, the Tribunal has directed it to deposit the aforesaid compensation together with interest and cost of Rs.24,431.17. The Tribunal has awarded the aforesaid compensation under the following heads:-

Heads	Amount awarded by the Tribunal
Loss of income (4,500 x 3)	Rs. 18,000/-
Transport	Rs. 10,000/-
Extra Nourishment	Rs. 10,000/-
Medical Expenses (42,500 + 14,920)	Rs. 57,420/-
Future Medical Expenses	Rs. 60,000/-
Pain and sufferings	Rs. 50,000/-
Disability of 48% at the rate of Rs.1000/- per disability (48 x 1000)	Rs. 48,000/-
Loss of earning capacity (4,500 x 12 - 1.3rd x 18)	Rs.6,48,000/-
Total	Rs.9,01,420/-

4. Aggrieved by the above compensation of Rs.9,01,420/-, the appellant Insurance Company has filed this Civil Miscellaneous Appeal. It is submitted that the Tribunal has awarded the aforesaid compensation for mere injuries suffered by the 1st respondent/claimant by adopting multiplier for computation of compensation apart from the conventional heads in the case of injury.

5. It is submitted that an amount of Rs.60,000/- awarded towards future medical expenses is speculative and excessive. The learned counsel for the appellant therefore submits that the award amount in the impugned Judgment and Decree passed by the Tribunal was liable to be modified. It is further submitted that the appellant also had the benefits of mediclaim from LIC of India and Max New York Life Insurance Company and therefore, sum of Rs.42,500/- and Rs.14,920/- towards medical expenses ought not to have been granted.

6. On the other hand, the learned counsel for the 1st respondent submits that the Tribunal has awarded just compensation and therefore, he prayed for dismissal of this Civil Miscellaneous Appeal. The learned counsel for the 1st respondent/claimant however submitted that the compensation at best can be restricted to Rs.7,21,444/- as follows:-

Heads	Amount
Loss of income	Rs. 18,000/-
Transport	Rs. 10,000/-
Future Transport Expenses	Rs. 15,000/-
Extra Nourishment	Rs. 25,000/-
Medical Expenses	Rs. 57,420/-
Future Medical Expenses	Rs. 60,000/-
Pain and Sufferings	Rs. 50,000/-
Disability (20 x 2,000)	Rs. 40,000/-
Loss of income (4,500 + 40/100 x 12 x 28/100 x 18)	Rs.3,81,024/-
Attender charges	Rs. 12,000/-
Damage to cloths	Rs. 3,000/-
Loss of amenities	Rs. 50,000/-
Total	Rs.7,21,444/-

7. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the 1st respondent/claimant.

8. The 1st respondent/claimant met with an accident on 16.02.2005 when he was riding his motorcycle. The accident is said to have taken place due to the negligent of the driver of the insured auto bearing registration No.TN-04-L-7529 belonging to the 2nd respondent, insured with the appellant Insurance Company.

9. The accident has led to amputation of four toes and fractures to the wrist in the right hand and fixation of plate on the right shoulder and multiple injuries to all over the body. The 1st respondent was treated as an inpatient from 16.02.2005 till the date of claim petition, i.e. 16.08.2005.

10. The 1st respondent was aged about 21 years at the time of accident. The permanent disability was assessed as 28% and the partial permanent disability was assessed as 20% by P.W3. The 1st respondent has lost of his four toes (four fingers of his left leg) and has suffered grievous injuries on all over the body which has not been disputed in this appeal by the appellant Insurance Company.

11. The Tribunal has wrongly adopted the percentage of disability to arrive the compensation of Rs.6,48,000/- towards loss of earning capacity. In my view, the Tribunal has awarded a slightly higher amount of compensation to the 1st respondent/claimant. I am of view, a percentage from the assessment of disability determined ought to have been considered as functional disability for determining the compensation as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343. Therefore, the functional disability for determining the compensation under the head of loss of earning capacity on account of disability can be fixed at 20% Considering the fact that the 1st respondent was just aged about 21 years at the time of the accident, I am of the view that the compensation to be awarded to the 1st respondent /claimant can be re-quantified as follows:-

Heads	Amount
Disability (20 x 2,000)	Rs. 40,000/-
Loss of earning capacity (4,500 + * 40/100 x 12 x 20/100 x 18)	Rs.2,72,160/-
Transport	Rs. 10,000/-
Extra Nourishment	Rs. 15,000/-
Medical Expenses	Rs. 57,420/-

Heads	Amount
Future Medical Expenses	Rs. 60,000/-
Pain and Sufferings	Rs. 50,000/-
Attender charges	Rs. 15,000/-
Damage to cloths	Rs. 1,500/-
Loss of amenities	Rs. 50,000/-
Loss of marital prospectus	Rs.1,00,000/-
Total	Rs.6,71,080/- rounded off to Rs.6,72,000/-

* Future prospectus as per the decision of the Hon'ble Supreme Court in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

12. Therefore, the appellant Insurance Company is directed to deposit the above re-quantified amount of compensation of Rs.6,72,000/- together with interest at 7.5% p.a (Except for Rs.60,000/- awarded towards future medical expenses) from the date of claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest thereon, less any amount already withdrawn, by filing suitable application before the Tribunal.

14. If the appellant Insurance Company has deposited any amount in excess of re-quantified amount of compensation determined by this Court, it is permitted to withdraw the excess amount together with interest accrued thereon, by filing suitable application before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

The II Judge,
Motor Accident Claims Tribunal,
(Small Causes Court - VI Judge),
Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras-600 104.

+1cc to Mr.J.Chandran, Advocate Sr.28437

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srg 02/02/2021