

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.14 of 2015

and

M.P.No.1 of 2015

United India Insurance Co.Ltd.,  
Silingi Building, No.134, Greams Road,  
Chennai-6. .... Appellant/2<sup>nd</sup> Respondent

versus

1.P.M.Mohideen Pillai ....1<sup>st</sup> Respondent/Petitioner

2.H.Anwar .... Respondent/1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai in M.C.O.P.No.2883 of 2013 dated 11.07.2014.

For Appellant : Ms.R.Vijaya Kamala

For Respondents : Mr.G.Balaji Prasad for R1  
Notice dispensed with for R2

#### J U D G M E N T

(The case has been heard through video conference)

The appeal preferred by the Insurance Company being aggrieved by the quantum of compensation awarded by the Tribunal to the claimant in MCOP No.2883 of 2013.

2. The brief facts of the case is that on 06.03.2013 at about 22.40 hours, the claimant met with an accident. As a pedestrian when he was about to cross the Purasawalkam High Road (Opposite to Romus Hotel) Chennai from North to South, the rider

of the motor cycle bearing Registration No.TN-07-AV-0948, in a rash and negligent manner dashed against the claimant, wherein, the claimant sustained fracture of his right leg and was treated as inpatient in Aysha Hospital from 06.03.2013 to 12.03.2013. He under went a surgery and right tibial nailing was done on his leg for the fracture. Therefore, the claim petition was filed before the Tribunal seeking compensation of Rs.10,00,000/-.

3. After considering the evidence placed before the Tribunal, the compensation of Rs.5,30,500/- was awarded as under:

|                                                                         |     |               |
|-------------------------------------------------------------------------|-----|---------------|
| 1.Loss of Income for six months<br>(6500 X 6)                           | Rs. | 39,000/-      |
| 2.Transportation, Extra nourishment<br>& damage to clothes and articles | Rs. | 25,000/-      |
| 3.Medical Expenses                                                      | Rs. | 65,000/-      |
| 4.Future Medical Expenses                                               | Rs. | 50,000/-      |
| 5.Attender Charges                                                      | Rs. | 2,000/-       |
| 6.Pain and Suffering                                                    | Rs. | 25,000/-      |
| 7.Disability of 50% at the rate of<br>Rs.2,000/- per percentage         | Rs. | 1,00,000/-    |
| 8.Loss of Amenities                                                     | Rs. | 10,000/-      |
| 9.Loss of Earning Capacity                                              | Rs. | 2,14,500/-    |
|                                                                         |     | -----         |
|                                                                         |     | Rs.5,30,500/- |
|                                                                         |     | -----         |

4. In this appeal, the Insurance Company primarily challenges the quantum of compensation awarded by the Tribunal, on the ground that the injury sustained by the claimant is not a scheduled injury and had not caused any impairment to his earning capacity and hence, the Tribunal ought not to have adopted the multiplier method. Having adopted multiplier method, the Tribunal should not also awarded a compensation of Rs.1,00,000/- for the disability of 50% at the rate of Rs.2,000/- for each percentage of disability.

5. The learned counsel for the appellant/Insurance Company would also submit that in the absence of evidence, a sum of Rs.50,000/- was awarded for future medical expenses, based on the certificate given by the Doctor, who was not a surgeon, who treated the claimant. Hence, the compensation awarded is exorbitant and excessive, liable to be reduced.

6. The learned counsel appearing for the 1<sup>st</sup> respondent/claimant would submit that the Tribunal has given adequate reasons for the award. Though the salary certificate issued by the employer indicates that the claimant was working as Cashier in Madharsha Show Room, Purasaiwalkam and earning Rs.12,000/- per month besides enjoying free boarding and lodging, the Tribunal has not accepted the salary certificate - Ex.P7. Since the employer, who given salary certificate was not examined and therefore, the income was fixed only as Rs.6,500/- per month, which is very nominal. As a Cashier, the injury sustained has certainly caused impediment to his skill and performance to discharge his duty. Therefore, the Tribunal has rightly adopted multiplier method.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 1<sup>st</sup> respondent and perused the records.

8. According to PW2, the injury sustained by the claimant is assessed as 50% disability, Ex.P10 relied to substantiate the assessment. The nature of injury sustained by the claimant is fracture of both bone of his right leg. It is neither a scheduled injury nor a total permanent disability. However, the Tribunal has taken the said injury as a injury likely to cause functional disability and had fixed 25% functional disability. The claimant avocation, according to his evidence, is a Cashier in a textile showroom, the fracture on his right leg may not cause any impediment in discharging his duty. However, the Tribunal has taken a liberal view on this fact and has applied multiplier method. This Court, at appellate stage not inclined to interfere with the said assessment of the Tribunal. At the same time, the Tribunal has gravely erred and awarded an additional sum of Rs.1,00,000/- on the head of disability. After adopting multiplier method for the disability caused, the duplication in awarding compensation under the different head for same injury has to be eliminated. Similarly, without any basis Rs.50,000/- has been awarded for future medical expenses.

9. As rightly pointed out by the learned counsel for the appellant, while the medical expenses for the main surgery itself is only Rs.65,000/-, for minor surgery for removal of nail Rs.50,000/- not required. On the basis of the material placed by the claimant, the said assessment and the compensation under the head of Future Medical Expenses is exorbitant. Therefore, this Court modifies the excess award passed by the Tribunal on various heads as under:

1.Loss of Income for six months                      Rs.    39,000/-  
(6500 X 6)

2.Transportation, Extra nourishment  
& damage to clothes and articles Rs.    25,000/-

|                            |               |
|----------------------------|---------------|
| 3.Medical Expenses         | Rs. 65,000/-  |
| 4.Future Medical Expenses  | Rs. 30,000/-  |
| 5.Attender Charges         | Rs. 2,000/-   |
| 6.Pain and Suffering       | Rs. 25,000/-  |
| 7.Loss of Amenities        | Rs. 10,000/-  |
| 8.Loss of Earning Capacity | Rs.2,14,500/- |
|                            | -----         |
|                            | Rs.4,10,500/- |
|                            | -----         |

10. The compensation is accordingly reduced from Rs.5,30,500/- to Rs.4,10,500/-. The appellant/Insurance Company is held liable to the said amount with interest at the rate of 7.5% per annum from the date of petition.

11. From the records, this Court finds that the appellant/Insurance Company has deposited the entire award amount and the claimant was permitted to withdraw 50% out of it. In such a case, any excess amount lying in M.C.O.P. No.2883 of 2013 over and above the award as modified in this appeal, the same shall be withdrawn by the Insurance Company on filing appropriate petition. The claimant is permitted to withdraw the balance award amount on appropriate application.

12. Accordingly, this Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

ssn  
To

1.The Vth Judge,  
The Motor Accidents Claims Tribunal,  
V Small Causes Court, Chennai.

+1cc to Mr.G.Balaji Prasad, Advocate SR.No.37247

C.M.A.No.14 of 2015  
and  
M.P.No.1 of 2015

NRJK (CO)  
GMY (12/05/2021)