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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2329 of 2015 &
MP.No.1 of 2015

Reliance General Insurance Co. Ltd.,
Balmer Lawrie House,
628, Anna Salai,
Chennai - 18.

...Appellant/2nd Respondent

/versus/

1. D.Elangovan ... 1st Respondent/Petitioner
2. S.Surendrakumar ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the award and decree dated 27.04.2015 made in M.C.O.P.No.4104 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.S.Angamuthu
For R1.
R2 - Exparte.

J U D G M E N T

Heard the counsel for the appellant and the respondents.

2. The appeal has been filed by the Insurance Company challenging the quantum of Award passed in M.C.O.P.No.4104 of 2011 by the MACT, Chennai. On 07.08.2011, when the claimant was travelling in a auto along with the family members near south Thandapani Street, Venkatnarayana Road, another Auto bearing Reg.No. TN04AE0050 came on the left side with high speed and negligently hit the auto in which the claimant was travelling. Due to the accident, the claimant sustained fracture on the left shoulder bone. He was admitted in the hospital on 07.08.2011 and got discharged on 12.08.2011. The claimant at the time of accident was serving as Cashier in Tamil Nadu State Co-operative Bank, Mylapore Branch, earning a sum of Rs.38,000/- per month. Hence, assessed the loss at Rs.5,00,000/- and restricted his claim to Rs.3,00,000/- and the petition was filed before the IV th Court of Small Causes, Chennai.



3. The Insurance Company resisted the claim petition on the ground that the accident occurred due to the negligence of the auto driver in which the claimant was travelling and the said driver had no valid documents for driving the Auto. Further the claim of Rs.3,00,000/- as compensation for the said injuries is excessive. The Tribunal on considering the Disability Certificate and Medical Bills awarded a sum of Rs.4,61,000/- as compensation.

4. The Insurance Company has preferred the appeal questioning the reason for awarding such huge compensation over and above the claimant, when the claimant had not lost any income due to the accident and there is no evidence to show that the injuries sustained by the claimant has caused 30% disability except the certificate given by the Doctor on clinical examination. The Disability Certificate does not provide the working sheet and the basis on which the disability has been arrived not explained.

5. The learned counsel appearing for the appellant submitted that the claimant was admitted in Raju Hospital, Chennai from 07.08.2011 to 12.08.2011, for the fracture of his left shoulder bone. After the treatment, he had recovered fully and joined duty as cashier. He did not suffer any loss of income during the treatment period or any loss of earning capacity owing to the accident injuries.

6. The learned counsel for the claimant would contend that the shoulder bone fracture caused pain and sufferings to the claimant and he was on leave for 46 days. The Tribunal after considering the nature of injuries had rightly awarded a sum of Rs.4,61,000/- as compensation and it requires no interference.

7. Heard the counsels. Records perused. The Discharge Summary and the Disability Certificate indicates that the claimant had sustained fractured of his left shoulder bone in the accident. After treatment, he had resumed his normal life after 46 days. The Doctor has assessed the Disability and given a certificate that the injuries have caused partial permanent disability at 35%.

8. The Tribunal based on the said Disability Certificate fixed the disability at 30% and awarded Rs.90,000/-. The reason given by the Tribunal is that the petitioner sustained fracture of left shoulder bone for which the open internal fixation of left shoulder bone was done. The said treatment has infact restored the claimant to his normal life. The Tribunal has awarded a sum of Rs.1,00,000/- towards pain and suffering, Rs.75,000/- towards Extra Nourishment and Rs.50,000/- for Transport which has no basis or reasoning. Further, when there is no evidence to show that the claimant needs future medical care, an Additional amount of Rs.50,000/- has been awarded to



the claimant towards future medical expenses which is an bonus which the claimant had not even prayed for. Hence, the award of the Tribunal is modified as below;

Disability (20% X Rs,3,000)	Rs. 60,000/-
Medical Expenditure	Rs. 53,000/-
Pain and suffering	Rs. 25,000/-
Extra Nourishment	Rs. 25,000/-
Transport	Rs. 10,000/-
Damage to cloth	Rs. 3,000/-
Attender charges	Rs. 20,000/-
Loss of Amenity	Rs. 5,000/-
Total	Rs.2,01,000/-

9. The interest at 7.5% from the date of petition till realisation is confirmed. From the records, this Court finds that the appellant has already deposited Rs.3,00,000/- in the O.P. Account. Hence, directed to pay the balance if any within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same by filing necessary petition.

10. Accordingly, the Civil Miscellaneous Appeal is disposed of. No orders as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

kmm

To
The Motor Accidents Claims Tribunal,
IV Court of Small Causes,
Chennai.

+1CC to M/s.S.Angamuthu, Advocate, SR.No.37579

+1CC to M/s.S.Arun Kumar, Advocate, SR.No.37628

C.M.A.No.2329 of 2015 &
MP.No.1 of 2015

CB(CO)
B.VC (07/09/2021)