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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2575 of 2015

and

M.P.No.1 of 2015

The National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai-600 002
now at
Motor Third Party Claims Cell,
No.46, Moore Street,
2nd Floor, Chennai-600 001. ... Appellant/2nd Respondent

/versus/

1.S.H.Peer Ali ...1st Respondent/Petitioner

2.M.Alamelu ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, to allow the Civil Miscellaneous Appeal by enhancing the award passed in the Judgment and Decree dated 19.02.2015 passed in M.A.C.T.O.P.No.3960 of 2013 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes), Chennai.

For Appellant : Mr.P.Sankaranarayanan

For R1 : No appearance

For R2 : Ex-parte

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Chennai in M.A.C.T.O.P.No.3960 of 2015 dated 19.02.2015.



2. Heard the learned counsel for the appellant.

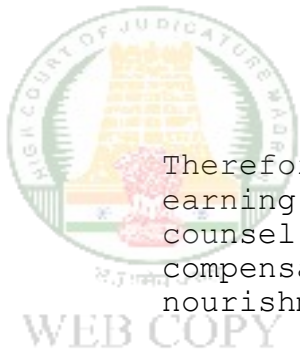
3. On 20.03.2013, the 1st respondent herein while riding his motorcycle bearing registration No.TN 01 AL 2476 in Syndams Road, near Nehru Indoor Play Ground, Chennai, the auto bearing registration No.TN 05 AF 9588 rash and negligently hit the 1st respondent causing injury. Hence the claim petition has been filed for a sum of Rs.6,00,000/- against the owner of the Auto and the Insurance Company.

4. The Tribunal has awarded a sum of Rs.5,58,500/- under the following heads:

Head	Award of the Tribunal
Disability	Rs.1,20,000.00
Pain and Sufferings	Rs. 75,000.00
Extra Nourishment	Rs. 75,000.00
Transport to Hospital	Rs. 25,000.00
Damages to clothes	Rs. 3,000.00
Loss of earning power	Rs.1,50,000.00
Medical expenses	Rs. 21,463.75
Future Medical Expenses	Rs. 50,000.00
Loss of Income	Rs. 39,000.00
Total	Rs.5,58,463.75

5. Aggrieved by the excessive compensation, the Insurance Company has preferred the appeal.

6. The learned counsel appearing for the appellant/Insurance Company would submit that the claimant is a Salesman in a Jewellery shop. Due to accident he sustained right leg fracture and injuries on his head, ears and nose. He was admitted in the Government General Hospital on 20.03.2013 and discharged on 23.03.2013. PW.2- the Doctor, who did not treat him, has clinically examined him and assessed 45% disability for the right leg fracture. The Tribunal having fixed the disability at 40%, awarded Rs.1,20,000/-, besides that for loss of income notionally fixed the monthly income of the injured person at Rs.6,500/- per month and awarded Rs.39,000/-. Having so awarded, there is no necessity for awarding any compensation for the loss of earning power for the injury sustained by the claimant.



Therefore, the additional award of Rs.1,50,000/- towards loss of earning power, by the Tribunal is unwarranted. The learned counsel for the appellant would also pointed out that besides compensation for disability, for pain and suffering and extra nourishment also compensation awarded on higher side.

7. The learned counsel for the claimant would state that the Tribunal has rightly awarded the compensation based on the medical records and evidence of PW.2. Therefore, there is no necessity to interfere the award. The disability certificate issued by PW.2 indicates that the claimant sustained right leg fracture. Due to this, he is unable to walk and sit. Though the said injury is not a schedule injury, it has impaired the earning capacity.

8. According to the appellant, the claimant is a Salesman in a Jewellery shop and earning a sum of Rs.8,500/- per month. The fracture injury has not been established how impairment caused to his earning capacity even remotely. Therefore, it is adequate to compensate for the loss of income during the treatment period and for the disability sustained. There is no necessity to award any additional compensation for loss of earning power.

9. On considering the rival submission, this Court finds that the Tribunal has awarded compensation for disability, loss of earning during treatment period, compensation for functional disability though the injury is not a schedule injury and another sum of Rs.50,000/- future medical expenses, when there is no evidence to show that the claimant requires future treatment. Hence the award of the Tribunal which is excessive needs interference. Accordingly the compensation given for the loss of earning power and future medical expenses without any basis and evidence are deleted. The compensation awarded under the other heads are confirmed. After modification the award amount revised as Rs.3,58,500/-.

10. The learned counsel for the appellant would submit that the entire award amount with interest has been deposited in the M.C.O.P. account as per the order passed by this Court on 19.11.2015. If it is so, the excess amount deposited by the appellant herein shall be withdrawn. The 1st respondent/claimant is permitted to withdraw the modified award amount on filing appropriate petition.



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11. With the above modification, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(SSA)

//True copy//

Sub Assistant Registrar

rpl

To

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

C.M.A.No.2575 of 2015
and M.P.No.1 of 2015

PP(CO)
GMY(18/11/2021)