

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2020	Pronounced on: 22.10.2020
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CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2601 of 2015

and

M.P.No.1 of 2015

M/s.United India Insurance Co.Ltd.,
Regional Office,
Dr.Nanjappa Road,
Coimbatore.

.. Appellant/3rd Respondent

/versus/

1.P.Kumaranayagam
2.P.Abraham Philip
3.K.Kumarasamy

.. Respondents/Petitioner/
Respondents 1 & 2

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.10.2013 made in M.C.O.P.No.177 of 2013 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.L.Mouli for R1
: R2-Exparte before the lower Court
: R3-No appearance

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the Insurance Company being aggrieved by the quantum of compensation awarded to the victim of the accident.

2. The short facts involved in this appeal is narrated as below:

On 11.06.2011, at about 8.00 a.m., when the 1st respondent/claimant was riding his two wheeler bearing registration No.TN 22 T 3976 from Ukkadam to Ganapathy at Coimbatore, a private town bus bearing registration No.TN 37 BE 2112 coming on the rear side of the petitioner's vehicle proceeding towards the same direction rash and negligently

dashed the two wheeler. The claimant was thrown out of the vehicle and he suffered heavy injury. He was taken to the Coimbatore medical college hospital. After first aid, he was shifted to Ganga hospital and was treated as in-patient from 11.06.2011 to 28.06.2011. He underwent surgery for replacement of tissues in the left ankle. After surgery the claimant suffers restricted left ankle movement and not able to move without assistance. As a Business Development Manager in LGB Lubricants and Services he has lost his salary on account of the accident during the treatment period till his recovery. Hence the compensation of Rs.14,00,000/- sought by the claimant.

3. In response to the claim, the Insurance Company has filed counter stating that the accident occurred due to the negligence of the claimant. The claimant has to prove the injury sustained and loss of earning.

4. The Tribunal on considering the rival submissions has awarded a sum of Rs.5,06,000/- as compensation under the following heads:

For partial permanent disability	Rs.30,000/-
For pain and sufferings	Rs.25,000/-
For mental agony	Rs.20,000/-
For Transport expenses	Rs.20,000/-
For Extra Nourishment	Rs.10,000/-
For Medical expenses	Rs.1,93,000/-
For loss of income from 11.06.2011 to 28.06.2011	Rs.13,000/-
For loss of earning for leave period of six months (Rs.20600x6=Rs.1,23,600) @ Rs.1,24,000/-	Rs.1,24,000/-
For loss of future earning power	Rs.40,000/-
For damages to motorcycle	Rs.31,000/-
Total	Rs.5,06,000/-

5. In the appeal filed by the Insurance Company, the learned counsel for the appellant would submit that the Tribunal erred in awarding an exorbitant sum of Rs.5,06,000/- for injury sustained in the left ankle, which was cured after skin drafting. There is no evidence to show the loss of income either during the treatment period or thereafter. However, the Tribunal has awarded the exorbitant sum of Rs.1,24,000/- towards the loss

of earning for the leave period and Rs.40,000/- for the loss of future earning power. Based on the quotation, for repairing charges without actual bill, the Tribunal has awarded Rs.31,000/- towards compensation for damages to the motorcycle. Therefore, pointing out that the injured claimant though entitled only for partial permanent disability, pain and suffering and medical expenses to the extend evidence produced. The compensation award under other heads has to be omitted.

6. Per contra, the learned counsel for the 1st respondent/claimant has proved that he was employed as the Business Development Manager earning Rs.28,000/- per month and the nature of injury sustained is reflected in the discharge summary Ex.P9, disability certificate Ex.P10 and X-ray Ex.P13 series for want of bill, claim under repair charges cannot be denied since the quotation Ex.P14 and the Motor Vehicle Inspector report Ex.P3 will prove that the vehicle of the claimant got substantially damaged and the same has to be compensated.

7. This Court on considering the rival submissions finds that the compensation awarded by the Tribunal on multiple heads of the non conventional heads without adequate basis has to be interfered. Particularly, the discharge summary and other medical records indicates that the claimant was admitted as an in-patient for 18 days and he has suffered defused swelling over the left leg and large irregular wound over the lateral aspect of the foot and the ankle joint. Necessary skin drafting has been done by harvesting tissues from Thoracodorsal muscular place. Based on the disability certificate, the Tribunal has awarded a sum of Rs.30,000/- for the loss of left ankle mobility and loss of skin over the left ankle. Based on the medical bill Ex.P11, a sum of Rs.1,93,000/- has been awarded. After awarding Rs.13,000/- for the loss of income during the treatment period, the Tribunal has gone ahead and paid a sum of Rs.1,24,000/- towards loss of earning for leave period and Rs.40,000/- for future earning power which is not warranted in the present case. Hence the award of the Tribunal is modified as under:

Partial permanent disability	Rs.30,000/-
Pain and Suffering	Rs.25,000/-
Attender charges	Rs.6,000/-
Transport charges	Rs.10,000/-
Extra nourishment	Rs.10,000/-
Medical expenses	Rs.1,93,000/-

Partial permanent disability	Rs.30,000/-
Loss of income during the treatment period	Rs.13,000/-
For damage of Motorcycle	Rs.31,000/-
Loss of earning for two months (Rs.20,600x2)	Rs.41,200/-
Total	Rs.3,59,200/-

Rounded of Rs.3,59,500/-

8. The Insurance Company is directed to deposit the modified award amount with interest at the rate of 7.5% p.a., from the date of numbering till the date of deposit within 12 weeks from today. The claimant/1st respondent is permitted to withdraw the modified amount less the amount already withdrawn. The Insurance Company is permitted to withdraw the excess amount if any on filing appropriate petition.

9. With the above modification, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

Copy To:

The Section Officer,
V R Section,
High Court Madras.

+1cc to Mr.S.Arunkumar, Advocate, sr no.34881

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PA(CO)
RMP(09/06/2021)