IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1515 of 2016
and
C.M.P.No.11579 of 2016

United India Insurance Co.Ltd.,
Motor Third Party Claims Office,
Silingi Building, No.134, Greams Road,
Chennai-6 ...Appellant

/versus/

1.Dr. S.Ravikumar

2.The Commissioner,
Corporation of Chennai, South Chennai,
Pudupet, Chennai-600 002. ...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment of the II Small Causes Court, Chennai in M.C.O.P.No.1918 of 2013 dated 02.11.2015.

For Appellant : Mrs.R.Vijayakamala

For R2 : Exparte

For R1 : Mr.K.Suryanarayan
For M.Swamikannu

J U D G M E N T

(The case has been heard through video conference)

The Insurance Company who is the respondent in the claim petition is the appellant herein. Aggrieved by the award passed by the Tribunal, Chennai, appeal is filed challenging the quantum.

2. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

3. It is a case of injury sustained by a medical professional in the road accident, whereby he has sustained

ligament tear, which is subsequently reconstructed. Having been employed in a hospital drawing gross salary of Rs.81,000/-, he was in the hospital for two months for treatment and lost his income besides medical income. Hence claimant has made a claim of Rs.16,00,000/- against the Corporation of Chennai, the owner of the vehicle and the Insurance Company which are insured the vehicle.

4. The Tribunal on considering the disability certificate, discharge summary and the salary certificate has awarded a sum of Rs.5,71,500/- with interest at the rate of 7.5% per annum.

5. In this appeal, the Insurance Company has contended that without any medical bill to support the claim, the Tribunal has awarded Rs.2,00,000/-, whereas Ex.P-6, the Mediclaim Settlement indicates that the total medical expenses incurred by the claimant is only Rs.1,12,455/- and the same was reimbursed and under the heads of medical expenses, the Insurance Company need not pay any compensation to the appellant. Likewise, it is also contended by the learned counsel for the appellant that the gross salary of the claimant was Rs.81,000/- and after statutory deduction his take home salary is about Rs.50,000/- and also there is no evidence to show that during the medical leave his salary was not paid by the employer. Therefore, it is contended that the Tribunal ought not to have award compensation under the head of loss of income during the treatment period.

6. The learned counsel for the respondent would submit that the Mediclaim reimbursement was not 100% of the expenses incurred. Within the parameter of the insurance Mediclaim Policy, the claim was restricted to Rs.1,12,445/- and only to that extend was reimbursed. The claimant is the doctor by profession. His loss of income during the treatment period has been rightly considered by the Tribunal while awarding Rs.1,60,000/-.

7. On perusal of the record and on hearing the submissions of the learned counsels, this Court finds that the Tribunal while fixing the medical expenditure at Rs.2,00,000/- ought to have taken note of the amount reimbursed under the Mediclaim, which the Tribunal has failed. Hence what amount has been reimbursed under the medical expenditure, the Insurance Company need not pay. Similarly, the loss of earning during the period of treatment, the claimant has not placed any record to show the salary was denied by the employee. During that period he was on medical leave and naturally salary would have been paid. The only loss of income can be presumed is in the income through private consultation, if any. Hence, this Court finds that it is sufficient to pay a sum of Rs.1,00,000/- under the

head medical expenses and a sum of Rs.60,000/- under the heads loss of earning during the period of treatment. Therefore, the award of the Tribunal is modified and reduced to Rs.3,71,500/- as under:-

Transportation, nourishing food and miscellaneous expenditure	Rs. 20,000
Medical Expenses	Rs.1,00,000
Attender charges	Rs. 1,500
Damages for pain, suffering and trauma	Rs. 50,000
Disability	Rs. 90,000
Loss of earning during the period of treatment	Rs. 60,000
Loss of amenities	Rs. 50,000
Total	Rs.3,71,500

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 petition till the date of deposit. 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, the 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 II Judge, Small Causes Court,
Chennai.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.1515 of 2016

vsn II[co]
srg 25/01/2021