

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.10.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.737 of 2015

and

M.P.No.1 of 2015

United India Insurance Co.Ltd.

No.2, Dr.Sankaran Road,

Namakkal Town & District.

... Appellant /2nd Respondent

/versus/

1.R.Karthick

...Petitioner

2.S.Revathi

... Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of M.V.Act, 1988, against the judgment and decree dated 11.07.2014 made in M.C.O.P.No.523/2013 on the file of the MACT (ADJ) at Namakkal.

For Appellant :Mrs.I.Malar

For Respondents :Mr.Ma.P.Thangavel for R1
No appearance for R2

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the Insurance Company, aggrieved by the award passed by the Tribunal compensating the claimant a sum of Rs.3,30,700/- for the injuries sustained by him in the accident.

2.The Tribunal has awarded the compensation as per the following break up:-

Sl. No.	Particulars	Amount Rs.
1.	Disability 35%	70,000-00

Sl. No.	Particulars	Amount Rs.
2.	Pain and Suffering	35,000-00
3.	Nutrition	30,000-00
4.	Transport	10,000-00
5.	Loss of Earning capacity	25,000-00
6.	Loss of earning during treatment period	65,000-00
7.	Medical expenses	75,673-00
8.	Future Medical expenses	20,000-00
	Total	3,30,673-00
		rounded off
		3,30,700-00

3.The Insurance Company, which has preferred this appeal is aggrieved by the liability and quantum of compensation. It is contended that the accident occurred due to the contributory negligence of the claimant, who under the influence of alcohol invited the accident. For the said submission, the learned counsel appearing for the Insurance company/appellant relied upon Ex.P4-Accident Register, in which the Doctor, who has examined the injured immediately after the accident has recorded that the injured breath smell of alcohol. Further, it is contended that the award of Rs.25,000/- towards loss of earning capacity and Rs.35,000/- towards pain and suffering and Rs.30,000/- towards nutrition and Rs.10,000/- towards transportation are excessive and not based on any evidence.

4. It is also contended by the learned counsel appearing for the appellant that the Tribunal has awarded Rs.65,000/- towards loss of earning during the treatment period while the records indicates that the injured person was treated as inpatient only for 7 days from 13.12.2012 to 19.12.2012. The learned counsel for the respondent/claimant submitted that breath smell alcohol recorded by the Doctor in Accident Register Ex.P2 is not a proof for drunken driving or negligent driving. In the absence of evidence the Tribunal has rightly ignored this defence. As far as the quantum of compensation under other heads they are fair and just.

5.Heard the rival submission. Records perused.

6.The plea of contributory negligence due to drunken driving is not found in the counter nor evidence let in by the

insurer to prove negligence on the part of claimant. In the appeal, this plea without proof need not be entertained.

7.The claimant's contention that he was earning Rs.15,000/- per month as a taxi driver-cum-owner is not supported by the document to substantiate this claim. While so, the Tribunal has awarded a sum of Rs.65,000/- towards loss of earning during the treatment period. This portion of the award and surplus amount of Rs.30,000/- towards nutrition appear to be excessive. Though there is no document to show that the injured need future medical expenses, the Tribunal has awarded Rs.20,000/- for future medical expenses.

8.On considering the over all quantum of award granted by the Tribunal as compensation and the plea raised in the appeal, this Court holds that the insurer has not proved and established any contributory negligence on the part of the injured claimant, except a reference about the breath smell of alcohol in Ex.P2. This is not sufficient to attribute any contributory negligence on the claimant, when the eye witness PW-1 had spoken about the negligence upon the offending car driver and also the police has prosecuted against the offending car driver. Contra plea pales to insignificance.

9.As far as the quantum of compensation awarded under the heads of nutrition, loss of earning during the treatment period and future medical expenses, this Court finds that they are excessive without any supportive documents. Hence, the award of the Tribunal is interfered and modified as below:-

Sl. No.	Particulars	Amount awarded by the Tribunal (Rs.)	Modified award passed by this Court (Rs.)	Enhanced/ Confirmed / Reduced
1.	Disability 35%	70,000-00	70,000-00	Confirmed
2.	Pain and suffering	35,000-00	35,000-00	Confirmed
3.	Nutrition	30,000-00	10,000-00	Reduced
4.	Transportation	10,000-00	10,000-00	Confirmed
5.	Loss of earning capacity	25,000-00	25,000-00	Confirmed
6.	Loss of earning during treatment period	65,000-00	18,000-00 (6000x3)	Reduced
7.	Medical expenses	75,673-00	75,673-00	Confirmed

Sl. No.	Particulars	Amount awarded by the Tribunal (Rs.)	Modified award passed by this Court (Rs.)	Enhanced/ Confirmed / Reduced
8.	Future Medical expenses	20,000-00	10,000-00	Reduced
	Total	3,30,673-00 rounded off 3,30,700-00	2,53,673-00 rounded off 2,54,000-00	Reduced

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. The modified award amount of Rs.2,54,000/- shall be deposited by the Insurance Company/appellant with interest at the rate of 7.5% p.a., from the date of petition, till the date of realisation, less the amount already deposited if any. On such deposit, the claimant/1st respondent is permitted to withdraw the same on filing proper application, less the amount already withdrawn by him, if any. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal,
Additional District Court,
Namakkal.

Copy to: The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.I.Malar, Advocate, S.R.No.33000

C.M.A.No.737 of 2015
and
M.P.No.1 of 2015

SPD (CO)
CB (29/04/2021)