IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2931 of 2013
and
MP No.1 of 2013

United India Insurance Co. Ltd.,
Silingi Buildings,
No.134, Greams Road,
Chennai - 600 006. .... Appellant/2nd Respondent

Versus

1.M.Arputham
2.K.Eaghavalli .... Respondents/Petitioner and 1st Respondent
(1st Respondent setexparte with Lower Court and may be dispensed with)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2013 made in MCOP No.4220 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.C.Paranthaman
For Respondents : Mr.A.A. Venkatesan for R1
M/s.T.P.Sekar for R2 - NA

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 16.04.2013 passed by the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai in MCOP No.4220 of 2011.

2. The appellant / Insurance Company has challenged the impugned award only on the ground that the quantum of compensation awarded by the Tribunal to the first respondent / claimant is excessive.

3. The details of the award passed by the Tribunal under the impugned award in favour of the first respondent / claimant are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income for 5 months	30,000
Transportation	5,000
Extra nourishment	5,000
Medical expenses	16,486
Attender charges	5,000
Loss of Amenities	30,000
Loss of Marital Status	30,000
Pain and suffering	50,000
Loss of earning power	5,18,400
Total	6,89,886
R/off	6,90,000

4. Heard Mr.C.Paranthaman, learned counsel for the appellant and Mr.A.A.Venkatesan, learned counsel for the first respondent.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. Before the Tribunal, the first respondent / claimant has filed 16 documents, which were marked as Exs.P1 to P16 and two witnesses were examined viz., the first respondent / as PW1 and her Doctor, who examined her as PW2. On the side of the appellant / Insurance Company neither any document was filed nor any witness examined before the Tribunal.

7. The first respondent / claimant has sustained fracture of both bones in the left leg and injury over the right pubic rami of right hip and fracture of right ribs. She has also sustained blunt injury over Abdomen, Urethral injury and Laceration over the Liver and Multiple injuries all over her body, as a result of the accident caused by the insured vehicle. The nature of the injuries sustained by the first respondent has not been disputed by the appellant / Insurance company before the Tribunal.

8. The Doctor of the first respondent viz., PW2 has also issued the Disability Certificate, which has been marked as PW15 before the tribunal. As per the Disability certificate(Ex.P15), the Doctor has assessed the partial and permanent disability of the first respondent / claimant at 55%. However, the Tribunal has fixed the disability only at 45%. The Tribunal has not

taken into consideration the whole body functional disability of the first respondent / claimant for the purpose of calculating the loss of earning power. If that was taken into consideration, the percentage of disability for the purpose of calculating the loss of earning power will be lesser. This Court is of the considered view that the Tribunal ought to have considered the whole body functional disability of the first respondent / claimant while assessing the loss of earning power. After giving due consideration to the nature of the injuries sustained by the first respondent / claimant, this Court is of the considered view that the whole body functional disability of the first respondent/claimant will have to be assessed at 30%. The assessment of disability at 45% by the Tribunal is on the higher side, since the Tribunal has not taken into consideration, the whole body functional disability of the first respondent / claimant which should be the basis for the purpose of calculating the loss of earning power. Accordingly, the percentage of disability fixed by the Tribunal at 45% is reduced to 30%, by this Court.

9. Insofar as the compensation towards loss of amenities and Marital status are concerned, which in the considered view of this Court is on the higher side and accordingly, Rs.5,000/- under each heads viz., loss of amenities and Marital status are reduced. Thus, the amount awarded under the head Loss of amenities is reduced to Rs.25,000/- from Rs.30,000/- and Marital status is reduced to Rs.25,000/- from Rs.30,000/-

10. With regard to other heads of compensation viz, Loss of income, Transportation, Extra nourishment, medical expenses, Attender charges and pain and suffering are concerned, this Court does not find any infirmity in the same and it is confirmed.

11. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award to the first respondent / claimant is reduced from Rs.6,90,000/- to Rs.5,96,486/- in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income for 5 months	30,000	30,000
Transportation	5,000	5,000
Extra nourishment	5,000	5,000
Medical expenses	16,486	16,486
Attender charges	5,000	5,000

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of Amenities	30,000	25,000
Loss of Marital Status	30,000	25,000
Pain and suffering	50,000	50,000
Loss of earning power *Rs.6000/- x 12 x 16 x 45% #Rs.6000/- x 12 x 16 x 30%	5,18,400 *	3,45,000 #
Disability Rs.3,000/- x 30%	-	90,000
Total	6,89,886	5,96,486/-
R/off	6,90,000	

12. In the result, this appeal filed by the Appellant / Insurance Company stands partly allowed by reducing the compensation from Rs.6,90,000/- to Rs.5,96,486/-, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

13. The appellant / Insurance Company is directed to deposit the entire award amount as awarded by this Court together with interest at 7.5% p.a. from the date of the claim petition till the date of realization and costs, less the amount, if any, already deposit to the credit of MCOP No.4220 of 2011, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the first respondent / claimant through RTGS within a period of two weeks thereafter.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2

To
1. The VI Judge,
Motor Accident Claims Tribunal
VI Court of Small Causes, Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

+2 Ccs to Mr.C.Paranthaman, Advocate sr 25609.

C.M.A.No.2931 of 2013

SAI(CO)
SP(02/09/2020)