



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.921 of 2015 &
CMP.No.3377 of 2016

The New India Assurance Co. Ltd.,
No.21, Pattulos Road,
Chennai 600 002.

...Appellant/2nd Respondent

/versus/

1. Vignesh Karthik

...1st Respondent/Petitioner

2. S.Irudhayaraj

...2nd Respondent/1st Respondent

(2nd Respondent is set exparte in the Lower Court.Hence notice to him is dispense with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 15.12.2014 passed in M.C.O.P.No.3723 of 2008 on the file of the Motor Accident Claims Tribunal, Chennai, (IV Judge, Court of Small Causes, Chennai).

For Appellant : Mr.R.Sivakumar

For Respondents : Ms.A.Subadra
for Mr.F.Terry Chella Raja for R1
R2 - Exparte.

J U D G M E N T

Heard the counsel for the appellant and the respondents.

2. The appeal is filed by the Insurance Company being aggrieved by the quantum of compensation awarded to the claimant. According to the appellant, a sum of Rs.8,47,750/- awarded to the claimant for the injuries sustained in the road accident occurred on 08.08.2008 is excessive.

3. The brief facts of the case is that on 08.08.2008, at about 6.45 hours, while the petitioner was riding his Motor cycle, he was hit by a van owned by the first respondent insured under the second respondent / Insurance Company. Due to the accident, the claimant suffered multiple injuries on his body and he was admitted at Hindu Mission Hospital. Later, he was admitted at Barani hospital, where he was treated as



inpatient from 08.08.2008 to 12.08.2008. He has sustained fracture in his jaw, left shoulder, both leg, hand injury, head injury and multiple injuries all over the body. The Doctor has assessed 40% disability for dental fracture and 45% disability for shoulder fracture.

4. The claimant at the time of accident was working in HCL, Chennai as Computer programmer, alleging that due to the accident, he lost his job. He has assessed the damage as Rs.12,00,000/- and restricted his claim to Rs.6,00,000/-.

5. The said claim petition was contested by the Insurance Company, on the ground that the Van driver, who caused accident had no valid driving license. Though the accident alleged to have occurred on 08.08.2008, First Information Report was filed only after two days. Further alleging that the accident has occurred due to the negligence of the claimant and liability is to be fixed against the insurer of the two wheeler and not against the insurer of the van and the second respondent prayed that the claim petition should be dismissed.

6. The Tribunal on considering the disability certificates Exs.P11 & P12 issued by PW3 & PW2 and all other evidences let in by the claimant and the respondents, had fixed the total disability at 80% and awarded Rs.3,000/- per percentage of disability. In total, the Tribunal has awarded a sum of Rs.8,47,751/- as compensation under various heads.

7. The learned counsel for the appellant / Insurance Company would contend that the fixation of disability at 80% is excessive compared to the injuries suffered by the claimant. Besides, awarding Rs.3,000/- per percentage of disability for the accident that occurred in the year 2008 is also excessive. In addition to the above, the Tribunal has awarded a sum of Rs.1,00,000/- each under the head pain and suffering, loss of amenity and loss of future prospects, when there is no evidence to show that the claimant had lost any amenities or future prospects. The learned counsel for the appellant would also submit that a sum of Rs.90,000/- awarded for loss of earning during the treatment period is also excessive, since the claimant was in Hospital only for a period of five days, that is, from 01.08.2020 to 12.08.2008. When there is no evidence to show that the claimant had any loss of income during the treatment period, fixation of Rs.90,000/- towards loss of earning is unwarranted.

8. Per contra, the learned counsel appearing for the claimant would state that the nature of injuries sustained by the claimant requires application of multiplier since the claimant sustained serious fracture in his Jaw and left



clavicle. The learned counsel further stated that the claimant has lost his job, his appearance has changed due to the disfigurement injury on jaw and on account of the injury sustained on his soldier, he is not able to lift any heavy weight. Hence he submitted that the Tribunal on considering all the evidences, had given adequate compensation under the appropriate heads.

9. The rival submission made by the counsels heard and records perused.

10. The claimant was 23 years old at the time of accident. He was working as a computer Programmer, HCL, Chennai, earning Rs.20,000/- per month. In support of his claim, he has filed Ex.P6, the salary Slip and Ex.P7, I.D issued by HCL. No doubt, he has not examined any person from HCL, Chennai to prove the genuineness of the documents. The Tribunal has awarded a sum of Rs.39,751/-, based on the Medical Bill which was marked as Ex.P4 series. Based on the treatment record marked as Ex.P5, the Tribunal has arrived at a conclusion that the claimant requires attender charges and therefore, awarded a sum of Rs.50,000/-. On considering the compensation awarded under various heads, this Court at the outset finds that the percentage of disability was awarded under two heads namely fracture of jaw disfigurement and fracture of clavicle. The Tribunal has fixed 80% disability. This is a case of jaw fracture. The Tribunal taking into consideration all the injuries sustained and relying upon the Judgement rendered by this Court in National Insurance Company Vs. C.T.Selvam reported in 2013 (5) TNMAC 583, had awarded a sum of Rs.3,000/- per percentage of disability and awarded Rs.2,40,000/- towards disability. This Court is of the view that the quantum of compensation awarded under the head disability need not be interfered. However, the Tribunal has awarded a sum of Rs.1,00,000/- towards pain and suffering and Rs.75,000/- towards Extra Nourishment which are on the higher side. Therefore, awarding Rs.1,00,000/- each towards loss of amenity and loss of future prospects is unwarranted in the absence of evidence. Accordingly, the loss of amenity and loss of future prospects are reduced to Rs.50,000/- each. Accordingly the award of the Tribunal is modified and reduced from Rs.8,47,751/- to Rs.7,47,751/- as under:

Disability	Rs.2,40,000/-
Pain and suffering	Rs.1,00,000/-
Extra Nourishment	Rs. 75,000/-
Transport to Hospital	Rs. 50,000/-
Damage to clothes	Rs. 3,000/-



WEB COPY

Disability	Rs.2,40,000/-
Attender charges	Rs. 50,000/-
Loss of earning	Rs. 90,000/-
Medical Expenses	Rs. 39,751/-
Loss of Amenities	Rs. 50,000/-
Loss of Future Prospects	Rs. 50,000/-
Total	Rs. 7,47,751/-

11. The Insurance Company is directed to deposit the amount at 7.5% interest from the date of petition till realisation. The learned counsel for the appellant submitted that the award amount has already been deposited along with proportionate interest. In such case, if any excess amount lying in the account over and above the modified award that shall be withdrawn by the appellant. The claimant is permitted to withdraw the compensation amount as per the order on proper application. Accordingly, the Civil Miscellaneous Appeal is disposed of. No orders as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmm

To

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

+1cc to Mr.R.Sivakumar, Advocate,Sr.37494
+1cc to M/s.Malar, Advocate,Sr.37602

C.M.A.No.921 of 2015 &
CMP.No.3377 of 2016

VG-II[co]
NSK 30/09/2021