IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.64 OF 2015

Reliance General Insurance Co. Ltd.,
2nd Floor, RAI Towers,
No.2054, 2nd Avenue, Anna Nagar,
Chennai-40. ... Appellant/2nd Respondent

/versus/

1. S.G.Amalraj,
2. V.Ambeth Babu, ... Respondents/Petitioner & 1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the award and decree dated 18.08.2014 made in M.C.O.P.No.6793 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	: Mr.S.Arun Kumar
For R1	: Mr.U.Chithambaram for Mr.M.Saravanan
For R2	: No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the appellant and the Learned Counsel for the 1st respondent.

2. This Appeal is filed by the insurance company being aggrieved by the exorbitant compensation award passed by the Tribunal. The facts of the case is that, when the claimant was riding his motor cycle bearing registration No.TN-18-L-6156 proceeding towards Madhavaram milk colony road, a TATA Magic van bearing registration No.TN-05-AK-0390 driven by his driver rash and negligently hit the claimant caused him grievous injury. The claimant was taken to hospital and admitted as inpatient. He was

treated for 16 days to cure his following injuries:- (i). Lacerated injury over the skull. (ii). Comminuted displaced fracture involving the post aspect of 1 to 8 ribs of left side. (iii). Fracture Scapula. (iv). Hydropneumo & Pneumothorax Left side Lung. (v). Contusion Left arm and chest. (vi). Splenic injury with hematoma.

3. After conservative treatment for the fracture of ribs and scapula, the claimant was discharged from the hospital. The claim petition seeking compensation of Rs.25,00,000/- was filed by the claimant, alleging that, the injury sustained by him in the road accident, had caused loss of income for six months and loss of earning capacity to a tune of Rs.7,00,000/-. Further, towards medical expenses past and future under other conventional heads, the claimed a sum of Rs.25,00,000/- alleging that, he was earning Rs.10,000/- as a Sale Executive in ISS Hardware Pvt Ltd. Due to the accident, he has sustained permanent disability causing impairment to his earning capacity.

4. The claim petition was resisted by the Insurance Company on the ground that, the accident occurred due to the fault of the claimant, who has contributed to the accident. His earning capacity as well as loss of income due to accident were denied.

5. Before the Tribunal, the claimant examined himself and one Dr.Saichandran. 10 Exhibits were marked in support of his claim.

6. The Tribunal, on considering the evidence of P.W.1 and Ex.P.1, the attested copy of the F.I.R held that, accident occurred due to the fault of the TATA magic vehicle owned by the 1st respondent and insured by the 2nd respondent. In the absence of contra evidence, the contention of the Insurance Company that the claimant contributed to the accident was negatived. On considering the discharge summary issued by KM Multi Speciality Hospital marked as Ex.P.2 and disability certificate issued by P.W.2 which was marked as Ex.P.9, the Tribunal fixed the income of the claimant as Rs.8,000/- per month in the absence of any proof to hold that the claimant was working as a Sale Executive in ISS Hardware Pvt Ltd. Accepting the evidence of P.W.2 and the disability certificate given by him marked as Ex.P.9, the Tribunal has fixed the disability as 60% and also arrived at a conclusion that due to his injury, the claimant has suffered his earning skill by 35%. Thus, a sum of Rs.8,36,600/- awarded as compensation with 7.5% interest from the date of numbering of the Petition (18.11.2013) till the date of realisation.

7. In this appeal, the Learned Counsel appearing for the appellant would submit that, the Tribunal has erred in awarding a sum of Rs.1,20,000/- for 60% disability at the rate of Rs.2,000/- per disability and also Rs.5,37,600/- under the head loss of earning power, which is not only duplication of the

compensation but also an exorbitant and excessive compensation given under the heads of loss of earning power. Further, the learned Counsel for the appellant would submit that the evidence of Doctor P.W.2, who admittedly not the doctor who treated the claimant but a regular visitor to the Court had admitted that the injury sustained by the claimant is not a scheduled injury. His disability certificate not accompanied with proper working sheet. No surgery was done for the fractured injury. He was treated under conservative method for the fracture and discharged, after full recovery. The alleged difficulty to conduct his normal day to work were only hearsay from the patient and not based on clinical examination.

8. The Learned Counsel for the appellant further submitted that the application of multiplier for non-scheduled injury, without adequate proof to show the loss of earning capacity is erroneous more so, when the claimant been compensated for the same disability by awarding a sum of Rs.1,20,000/-.

9. Per contra, the Learned Counsel for the respondent would submit that the accident occurred on 14.09.2013. At the time of accident, the claimant was working as a Sale Executive, earning Rs.10,000/- per month. He was holding Diploma in Electrical Wiring and had every potential to earn more than Rs.10,000/- per month. While so, the Tribunal fixed only Rs.8,000/- as monthly income and though the Doctor has assessed the disability as 70%, the Tribunal reduced it to 60% as 35% physical disability and for functional disability fixed as 35% to compute loss of earning power. The learned Counsel would also submit that the claimant was in hospital as inpatient for 16 days and continued his treatment as out patient for nearly one year for the fracture of his ribs and scapula. Therefore, the claimant suffered loss of income for more than one year. The Tribunal has awarded compensation for the loss of income during treatment only for six months.

10. Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent.

11. As pointed out by the Learned Counsel for the appellant, the Tribunal, after awarding a sum of Rs.1,20,000/- for 60% disability, had in addition, awarded a sum of Rs.5,37,000/- for the loss the earning power. There is no evidence to show that the claimant suffered earning power and such impairment or disability extends to 35%. The disability certificate Ex.P.9 does not disclose any injury mentioned in the schedule. The fracture was treated conservatively. No evidence to show that the claimant after treatment, required any further medical care or attendance. The discomfort and difficulty expressed by the claimant and spoken by the Doctor P.W.2 only relates to pain and sufferings and for loss of amenity but not loss of earning capacity. Therefore, this Court holds that a sum of Rs.5,37,600/- awarded under permanent loss of earning power is unwarranted. At the same time, since the accident occurred in

the month of September 2013, fixation of compensation at the rate of Rs.2,000/- per disability by the Tribunal required enhancement to Rs.3,000/- and loss of income during treatment period to be increased from 6 months to 12 months. Also for loss of amenities the compensation is enhanced from Rs.25,000/- to Rs.50,000/- Accordingly, the award of the Tribunal is modified as below:-

Sl.Nos.	Compensation under various heads	Award passed by this Court
1.	Loss of Income for 12 months (12 x Rs.8,000)	Rs.96,000
2.	Transportation	Rs.15,000/-
3.	Extra nourishment	Rs.15,000/-
4.	Damage to clothes	Rs.1,000/-
5.	Medical expenses	Rs.25,000/-
6.	Loss of amenities	Rs.50,000/-
7.	Mental agony and Pain and sufferings	Rs.50,000/-
8.	Disability of 60% at the rate of Rs.3,000/- per disability	Rs.1,80,000/-
	Total	Rs.4,32,000/-

12. The award of the Tribunal is modified and reduced from Rs.8,36,600/- to Rs.4,32,000/-. The Appellant/Insurance Company is directed to deposit the amount in the M.C.O.P. account with 7.5% from the date of numbering the petition (18.11.2013) till the date of realization, within a period of 8 weeks from the date of receipt of a copy of this order. The Learned Counsel for the appellant submits that the entire award amount has already deposited in the M.C.O.P account pursuant to the direction of this Court. In such circumstances, the appellant is permitted to withdrawn excess amount lying in the M.C.O.P account, less the amount as per the modified award passed by this Court. The claimant is permitted to withdrawn the awarded amount with proportionate interest on filing proper application.

13. Accordingly, the Civil Miscellaneous Appeal is Party-allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)
dt 09/04/2021

//True Copy//

Sub Assistant Registrar

bsm

To.

1. The II-Judge,
   Small Causes Court,
   Motor Accidents Claims Tribunal,
   II Court of Small Causes,
   Chennai.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.38012
+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.38007

C.M.A.No.64 of 2015

BR(CO)
HS(16/08/2021)