IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.09.2020

Coram:

THE HONOURALE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.643 of 2016
and
C.M.P.No.5305 of 2016

United India Insurance Co.Ltd.,
Silingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai 600 006. .. Appellant /2nd Respondent

/versus/

1.K.Naveen Kumar

2.V.Gandhimathi Sree .. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 08.06.2015 made in O.P.No.404 of 2013 on the file of the Motor Accidents Claims Tribunal(In the IV Court of Small Causes), Chennai.

For Appellant :Mr.D.Bhaskaran

For Respondents :Mrs.Ramya Rao for R1
R2- not ready notice

JUDGMENT

(This case has been heard through Video Conference)

Aggrieved by the excess compensation awarded by the Tribunal, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

2.The brief facts of the case is that one Naveen Kumar, while riding his motorcycle towards east direction on Cathedral Road, Opposite to Chola Hotel, Chennai, a car bearing Reg.No. TN 07 W 1742 which came from the opposite direction rash and negligently, hit the motor cycle causing fracture injury to him. The victim was admitted in the Government hospital and later, shifted to Isabellah Hospital on 08.11.2012 as inpatient for further treatment and discharged on 19.11.2012. His right leg bone got fractured besides injuries on his head and left eyebrow. Claiming compensation of Rs.6,00,000/- on the ground that he had sustained permanent disability and lost his income during the treatment period and also sustained medical expenses, has laid a claim petition justifying the quantum of compensation as claimed.

3.The Insurance Company has filed a detailed counter wherein it has been stated that they are not liable to pay any compensation to the claimant, since the accident did not occur in the manner in which it has been narrated in the claim petition. Further, the quantum of compensation claimed was also disputed.

4.The Tribunal on considering the medical evidence has assessed the disability as 35% and awarded Rs.1,05,000/- for disability. In addition, it has also awarded Rs.43,000/- for medical expenses which is supported by bills. Except these two heads, for the other non-conventional heads, the Tribunal has awarded around Rs.4,00,000/-. Totally, making the total compensation as Rs.5,44,000/- under different heads is as below:

Sl. No.	Particulars	Amount awarded by the Tribunal (Rs.)
1.	Disability	1,05,000-00
2.	Pain and Suffering	1,00,000-00
3.	Extra nourishment	75,000-00
4.	Transport to Hospital	50,000-00
5.	Damages to Clothes	3,000-00
6.	Attender Charges	30,000-00
7.	Medical expenses	43,000-00
8.	Future Medical expenses	50,000-00
9.	Loss of income	38,000-00
10.	Loss of earning power	30,000-00
11.	Loss of Amenities	20,000-00
	Total	5,44,000-00

5.The said quantum is now challenged by the Insurance Company on the ground that the Tribunal has awarded highly exaggerative compensation based on the wrongful assessment of disability made by the Doctor, who did not treat the claimant and on other conventional and non conventional heads without any evidence.

6.The learned counsel appearing for the respondent/claimant would submit that the claimant, who was working as Data Entry Operator after the accident, has lost his earning capacity and the disability being permanent in nature on his right leg, the claimant has lost his quality of life and amenities for the rest of his life. Hence, the award passed by the Tribunal has to be sustained.

7.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 1st respondent.

8.The injury sustained by the claimant is fracture in his right leg. The Doctor, who was examined the claimant has issued disability certificate Ex.P10 wherein he has assessed the disability at 40%. There is no specific evidence to show that the disability has caused functional disability to the claimant, which has bearing in his earning capacity. However, the Tribunal, after fixing disability at 35%, awarded Rs.1,05,000/- under the head of disability. It has further gone to an extent of awarding Rs.1,00,000/- for pain and suffering, Rs.50,000/- for future medical expenses and Rs.30,000/- for loss of earning power. Particularly, when there is no evidence to show that the claimant has lost his potential to earn due to the accident, a sum of Rs.30,000/- towards loss of earning power is unwarranted. Likewise, a sum of Rs.1,00,000/- awarded for pain and suffering and Rs.75,000/- towards extra nourishment is also on the higher side, which require interference.

9.Before the tribunal the claimant has relied upon 10 exhibits. They all are related to the medical records like discharge summary, accident register, OP chit, pharmacy bill, x-ray. There is no evidence to show that the claimant could have incurred expense for transport. Without any document and evidence the Tribunal has awarded Rs.50,000/- for transport to hospital which is very high without any basic evidence.

10.In the above circumstances, this Court is bound to interfere with the award of the Tribunal and modified as below:-

Sl. No.	Particulars	amount awarded by the Tribunal (Rs.)	modified amount awarded by this Court (Rs.)
1.	Disability	1,05,000-00	1,05,000-00(35% x3000)
2.	Pain and Suffering	1,00,000-00	25,000-00

Sl. No.	Particulars	amount awarded by the Tribunal (Rs.)	modified amount awarded by this Court (Rs.)
3.	Extra nourishment	75,000-00	10,000-00
4.	Transport to Hospital	50,000-00	10,000-00
5.	Damages to Clothes	3,000-00	3,000-00
6.	Attender Charges	30,000-00	15,000-00
7.	Medical expenses	43,000-00	43,000-00
8.	Future Medical expenses	50,000-00	15,000-00
9.	Loss of income	38,000-00	26,000-00
10.	Loss of earning power	30,000-00	----
11.	Loss of Amenities	20,000-00	20,000-00
	Total	5,44,000-00	2,72,000-00

11.Learned counsel appearing for the appellant would submit that pursuant to the interim order passed by this Court, the Insurance Company has already deposited the entire award amount with interest and the claimant has already withdrawn 50% of the amount deposited before the tribunal.

12.In such circumstances, this Court is of the view that if any money drawn in excess by the claimant herein, by virtue of the interim order this Court, need not be recovered back by the insurance company. The balance amount, which is now standing in the account of M.C.O.P.No.404 of 2013 is permitted to be withdrawn by the Insurance Company/appellant.

13.With the above observation, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ari

To:

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

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

C.M.A.No.643 of 2016
and
C.M.P.No.5305 of 2016

SPD(CO)
RMP(07/05/2021)