



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.09.2020

Pronounced on: .09.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.814 of 2016
and C.M.P.No.6601 of 2016

M/s.The New India Assurance Co.Ltd.,
Anna Nagar Division Office,
No.46, I Main Road,
Mangalam Buildings, II Floor,
Anna Nagar East, Chennai-600 102. ...Appellant/2nd Respondent

/versus/

1.D.Subburayan ..1st Respondent/Petitioner

2.S.Vijaya ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 20.07.2015 passed in M.C.O.P.No.1393 of 2011, on the file of the Motor Accidents Claims Tribunal, (V Court of Small Causes), Chennai.

For Appellant : Mr.J.Micheal Visuvasam

For R1 : Mr.R.Kalaiarasan

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 Respondent No.1.

2. The Appeal is filed by the Insurance Company, which is aggrieved by the award passed by the Motor Accidents Claims Tribunal, Chennai.

3. The respondent/claimant met with an accident on 17.12.2010 while crossing the road near Jayanthi Theatre, Nandambakkam, Chennai. He was admitted in the hospital and treated for two days. Claiming that, he took native treatment at Puttur, filed petition claiming Rs.2,00,000/- as compensation



against the car owner and the insurer of the car, which hit him while crossing the Mount-Poonamallee Road.

4. The accident occurred on 17.12.2010, the Petition was filed on 22.12.2010. After nearly 4 years, amendment petition was filed and same was allowed on 17.12.2014. The claim amount was amended from Rs.2,00,000/- to Rs.12,00,000/-. Thereafter, the Trial commenced and the impugned award was passed on 20.07.2015.

5. Before the tribunal, the Insurance Company filed counter and additional counter stating that, the accident occurred due to the reckless and indiscreet Act of the claimant while crossing the road unmindful of oncoming car. The age and income of the claimant was disputed. The injuries sustained were minor in nature. He was treated without surgery and discharged within two days. No evidence to show that he took treatment at Puttur or elsewhere. The claim is fanciful without any relevancy to the injury.

6. The Tribunal accepting the documents placed by the claimant has awarded Rs.7,11,000/- as compensation with 7.5% interest. The break up under different heads is given below:

1.	Transportation, Nourishing food and miscellaneous expenditure	Rs.50,000/-
2.	Attender charges	Rs.25,000/-
3.	Medical Expenses	Rs.1,000/-
4.	Disability	Rs.1,35,000/-
5.	Loss of earning capacity	Rs.4,00,000/-
6.	Damages for pain, sufferings and trauma	Rs.50,000/-
7.	Loss of amenities	Rs.50,000/-
	Total	Rs.7,11,000/-

7. In the appeal, the Insurance Company has challenged the award on the ground that, the award is not in consonance with the facts and evidence placed on record. There is no evidence to show the claimant was employed as a cook and earning



Rs.500/- per day. The claimant himself has stated to the police while giving complaint about accident, that he was a storekeeper in a hotel. Contrary to his statement in F.I.R marked as Ex.P-1, the claimant has deposed that he was working as a cook at the time of accident and presently working as watchman. The Tribunal, instead of fixing the monthly income notionally, had fixed the income of the claimant as Rs.7,500/- without any documentary proof. The Tribunal erred in awarding compensation for loss of earning with additional future prospects. The discharge summary marked as Ex.P-2 clearly shows that the claimant was treated conservatively for two days and discharged. The injury was only rearrangement of right knee and same was treated conservatively without surgery. He has not taken any treatment thereafter. While so, the Tribunal has erroneously relied on the disability certificate issued 4 years after accident by a doctor, who never treated the claimant.

8. Admittedly, the doctor who gave the disability certificate has relied on the MRI scan took 4 years after the accident and that disability certificate is not based on the medical records soon after the accident. The discharge summary Ex.P-3 issued on 19.12.2010 indicates that, there is no bone injury and the X-ray of right knee show internal rearrangement. When there is no proof to show the disabilities mentioned in the certificate Ex.P-9 based on Scan report Ex.P-7 are related to the accident occurred 4 years earlier the Tribunal ought to have rejected the doctor (P.W-2) evidence and his certificate in toto.

9. The Learned Counsel for the Appellant also draw the attention of this Court that the claimant originally filed the claim petition only for Rs.2,00,000/-, but due to some extraneous reasons filed amendment petition making a hoofing claim from Rs.2,00,000/- to Rs.12,00,000/-. The Tribunal has awarded compensation of Rs.7,11,000/- under different heads without any claim and material evidence. Merely based on the disability certificate and deposition of the doctor, who admitted in the cross examination that he had not annexed any working sheet to assess the disability and the disability percentage is only for the leg and not for whole body. Hence, pray for set aside the award.

10. The learned counsel for the respondent/claimant would submit that, the claimant was working as a cook at the time of accident. Due to the physical disability caused by the accident, he is not able to stand for a long time. Hence, he joined as watchman in a hotel for a lesser salary. The Tribunal, taking note of the injury and the disability caused due to the



14. Thus, it is clear from his evidence that the disability certificate is based on the X-ray and Scan taken 4 years after the accident, which shows ligament tear of knee joint. Whereas, the X-ray report taken after two days of the accident only indicates rearrangement of right knee joint and no bone injury.

15. When there is no correlation with the injuries mentioned in the discharge summary Ex.P-3 and in the disability certificate Ex.P-9 based on X-ray and Scan report taken after 4 years, the Tribunal has heavily relied upon later documents to fix the disability as 45% in spite of the fact that the doctor admitting the percentage of disability, he has mentioned is only for leg and not for whole body. Further, after awarding Rs.1,35,000/- for disability, the Tribunal has also awarded Rs.4,00,000/- towards loss of earning capacity. For awarding this Rs.4,00,000/- again the Tribunal rely upon P.W-2 evidence, which per se unworthy of reliance due to the incompetency of the PW-2 to speak about the accident injury without examining the medical records of relevant point of time. His evidence based on the clinical examination 4 years after the accident, at the most is about the present health condition of the claimant. The present difficulty mentioned by the doctor may be due to age related but not necessarily due to the accident. The only document which is reliable to assess the disability and loss of amenities is Ex.P-3 which is the discharge summary issued by the hospital which treated the claimant and the medical bills Ex.P-4 series which provides inferential facts.

16. In this context, the claimant had procured records after four years and amended the petition enhancing the claim from Rs.2,00,000/- to Rs.12,00,000/-. The Tribunal has awarded Rs.7,11,000/- without any documents to prove the claimant was taking native treatment at Puttur, transportation and loss of earning capacity. These errors found in the Tribunal award renders it unreasonable excess and disproportionate.

17. Therefore, the award of the Tribunal is modified. The doctor has certified the disability as 45%. In the cross examination, he has admitted that this percentage of disability is restricted for leg alone and not for whole body. Then, for whole body, it has to be reduced proportionately. Taking note of the other facts, the partial temporary disability is fixed at 30% and Rs.90,000/- awarded as compensation. The award of Rs.4,00,000/- for loss of earning capacity is set aside for want of evidence. Further, the award under other heads being disproportionate to the injuries and evidence, they are reduced



to the extent reasonable and fair. Based on reliable evidence, the compensation is awarded as under:

1.	Disability 30% x Rs.3,000/-	Rs.90,000/-
2.	Transport and nourishment	Rs.10,000/-
3.	Attender charges	Rs. 1,000/-
4.	Medical expenses (As per bills under Ex P-4 series	Rs. 663/-
5.	Pain and sufferings	Rs.15,000/-
6.	Loss of income during treatment period	Rs. 4,500/-
7.	Loss of amenities	Rs.15,000/-
	Total	Rs.1,36,163

Rounded off to Rs 1,36,500/-

18. The award of the Tribunal is modified. The claimant is entitled for a compensation of Rs.1,36,500/- with 7.5% interest from the date of numbering (17.12.2010) till the date of realisation.

19. The Learned counsel for the appellant submitted that in reverence to the direction of this Court in C.M.P.No.6601 of 2016, dated 15.04.2016, they have deposited Rs.2,50,000/- in the M.C.O.P.No.1393 of 2011, out of which, the claimant was permitted to withdraw Rs.2,00,000/- as per the order dated 13.09.2017 in C.M.P.No. 9088/2016.

20. In the above said facts, the claimant is permitted to withdraw the award amount with interest as per the modified award, less money already withdrawn. If the amount already deposited is sufficient to satisfy the award and any balance available after satisfying the award, the same shall be withdrawn by the appellant/Insurance Company. In case, if the money withdrawn is excess than the money to be paid, no recovery from the claimant shall be initiated. If the money to be paid is more and above. The money already deposited in the M.C.O.P account, the appellant shall deposit the balance money within a period of 12 weeks from the date of receipt of copy of this order.



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21. In the result, the Civil Miscellaneous Appeal is Partly-allowed. No costs. Consequently, connected civil miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

rpl/bsm

To,

- 1.The Motor Accidents Claims Tribunal,
(V Court of Small Causes), Chennai.
2. The Section Officer,
VR Section, High Court Madras.

+lcc to Mr.N.M.Muthurajan, Advocate SR.No.31795

C.M.A.No.814 of 2016
and C.M.P.No.6601 of 2016

SR (CO)
GMY (23/04/2021)