

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1588 of 2014 and 519 of 2017  
and M.P. No. 1 of 2014

C.M.A. No.1588 of 2014

M/s. United India Insurance Company Limited  
Andiappa Gramani Street  
Royapuram  
Chennai - 600 013.

.. Appellant in CMA.1588  
and 2<sup>nd</sup> Respondent in CMA.519/17/  
2<sup>nd</sup> respondent in MCOP

Vs.

1.A. Suresh Kumar

....1<sup>st</sup> Respondent in CMA 1588  
& Appellant in CMA.519

2.R. Sainath

..2<sup>nd</sup> Respondent in & 1<sup>st</sup>  
Respondent in CMA.519/17  
Petitioner & 1<sup>st</sup> Respondent in MCOP.

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.11.2013, made in M.C.O.P. No. 3222 of 2010, on the file of the Motor Accident Claims Tribunal (Small Causes Court-V), Chennai.

For Appellant : Mr. J. Chandran

For Respondents: Mr. F. Terry Chella Raja  
For M/s. V. Velu (For R1)

C.M.A. No. 519 of 2017

A. Suresh Kumar

.. Appellant /Petitioner

Vs.

Page numbers

1.R. Sainath

2.M/s. United India Insurance Company Limited  
Andiappa Gramani Street  
Royapuram  
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..Respondents/Respondents

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For Appellant : Mr. F. Terry Chella Raja  
For M/s. V. Velu

For Respondents: Mr. J. Chandran (For R2)

#### C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 05.11.2013, made in M.C.O.P. No. 3222 of 2010, on the file of the Small Causes Court - V, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their ranks in the claim petition.

3.The claimant filed M.C.O.P. No. 3222 of 2010, on the file of the Small Causes Court - V, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.06.2010.

4.According to the claimant, on the date of accident viz., 27.06.2010, while he was walking at Waltax road near Kondithope Police Quarters, a Yamaha Motorcycle bearing Registration No. TN 02 J 3341, belonging to the 1<sup>st</sup> respondent, driven by its rider at a dangerous speed, in a rash and negligent manner, hit behind the claimant and caused the accident. In the accident, the claimant sustained grievous injuries and filed the claim petition, claiming compensation for the injuries against the respondents as owner and insurer of the Motorcycle respectively.

Page numbers

5.The 1<sup>st</sup> respondent remained exparte before the Tribunal.

6.The 2<sup>nd</sup> respondent-Insurance Company filed counter statement and denied various averments made by the claimant in the claim petition. According to the 2<sup>nd</sup> respondent, at the time of accident, there was no existence of valid insurance policy and the rider of the Motorcycle was not possessing effective driving license, for which he was charge sheeted vide Crime No. 195/C2/10 and fined vide C.C. No. 3176 of 2010. For such violation of the policy conditions, the 2<sup>nd</sup> respondent is not liable to pay any compensation to the claimant. In any event, the claimant has to prove the age, avocation, income, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1 and examined one Doctor as P.W.2 and marked 9 documents as Exs.P1 to P9. The 2<sup>nd</sup> respondent examined one Investigator as R.W.1 and their Senior Assistant as R.W.2 and marked 8 documents as Exs.R1 to R8.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 1<sup>st</sup> respondent and directed the appellant-Insurance Company, as insurer, to pay a sum of Rs.5,10,000/- as compensation to the claimant at the first instance and recover the same from the 1<sup>st</sup> respondent.

9.Challenging the liability fixed on them and questioning the quantum of compensation granted by the Tribunal, the 2<sup>nd</sup> respondent-Insurance Company has come out with C.M.A. No. 1588 of 2014 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A. No. 519 of 2017.

10.Though the 2<sup>nd</sup> respondent has raised various grounds with regard to negligence on the part of the claimant, at the time of arguments, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company restricted his arguments with regard to quantum of compensation granted to the claimant. The learned counsel appearing for the 2<sup>nd</sup> respondent/ Insurance Company contended that the amount of Rs.5,10,000/-, awarded by the Tribunal for injuries sustained by the claimant is highly excessive. The Tribunal failed to consider that P.W.2- Doctor, who assessed that the claimant suffered 60% disability on the basis of the discharge summary and clinical examination, is not an Orthopaedician. The 1<sup>st</sup> respondent did not produce any

Page numbers

records for taking continuous treatment after discharge. The Tribunal ought to have disbelieved the evidence of P.W.2. In the absence of any material evidence, the Tribunal erred in awarding compensation by applying multiplier method. The Tribunal without any basis, fixed monthly income of the claimant at Rs.5,000/-, applied multiplier '18' and awarded excessive compensation and hence, prayed for setting aside the award of the Tribunal.

11.The learned counsel appearing for the claimant contended that in the accident, the claimant sustained fractures of grade II compound bimalleolar fracture of left leg. The 1st respondent examined P.W.2/Doctor and proved the nature of injuries and disability suffered by the claimant. The appellant did not let in any contra evidence. The learned counsel appearing for the claimant submitted that the claimant examined P.W.2/Doctor and proved that he suffered 60% disability. The Tribunal without any reason, reduced the percentage of disability to 30% and awarded meagre amounts as compensation. The claimant was working as Sales Executive in Agarwal Infocomms and was earning a sum of Rs.10,000/- per month. He has produced Ex.P4 - Salary certificate to prove the same. The Tribunal without any reason, did not accept Ex. P.4 and fixed the monthly income of the claimant at Rs.5,000/- and granted meagre amounts towards loss of earning power. The appellant has taken treatment as in-patient for 13 days. The Tribunal has granted only a sum of Rs.5,000/- each towards attendant charges and extra nourishment and prayed for dismissal of C.M.A. No. 1588 of 2014 filed by the 2<sup>nd</sup> respondent and for enhancement of the compensation.

12.Heard the learned counsel appearing for the claimant as well as the 2<sup>nd</sup> respondent-Insurance Company and perused the entire materials available on record.

13.It is the contention of the claimant that in the accident, he suffered fractures of grade II compound bimalleolar fracture of left leg. The claimant further contended that at the time of accident, he was working as Sales Executive and was earning a sum of Rs.10,000/- per month. The claimant produced Ex.P.4- Salary Certificate, in which it has been mentioned that he was earning a sum of Rs. 84,000/- per annum. The Tribunal did not accept Ex.P4-Salary Certificate on the ground that the claimant did not examine the author of the said document and fixed a sum of Rs.5,000/- per month as notional income. The accident is of the year 2010. The monthly income fixed by the Tribunal is meagre. Considering the nature of work, educational qualification and the age of the claimant, a sum of Rs.7,000/- is fixed as monthly income. The Tribunal considering the nature

Page numbers

of injuries, treatment taken, disability suffered and evidence of P.W.2 /Doctor, has adopted multiplier method to award compensation towards loss of earning power. P.W.2/Doctor examined the claimant and certified that the claimant suffered 60% disability. The Tribunal reduced the same and fixed as 30% loss of earning power. The reason given by the Tribunal for adopting multiplier method and fixing 30% loss of earning power is valid. Hence, the amounts awarded by the Tribunal towards loss of earning power is modified to Rs.4,53,600/- [Rs. 7,000/- X 12 X 18 X 30/100]. Considering Ex.P8 - Disability Certificate, nature of work, age, period of treatment taken by the claimant, the amounts awarded by the Tribunal towards extra nourishment and attendant charges are enhanced to Rs.10,000/- each. The Tribunal has granted excessive amount of Rs.75,000/- each towards pain and sufferings and loss of amenities and hence, the same are reduced to Rs.25,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description           | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|-----------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of income        | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 2.    | Transportation        | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 3.    | Extra nourishment     | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 4.    | Attendant charges     | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 5.    | Damage to clothes     | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 6.    | Medical expenses      | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 7.    | Loss of amenities     | 75,000/-                        | 25,000/-                          | Reduced                                |
| 8.    | Pain and suffering    | 75,000/-                        | 25,000/-                          | Reduced                                |
| 9.    | Loss of earning power | 3,24,000/-                      | 4,53,600/-                        | Enhanced                               |

|  |       |            |            |                                   |
|--|-------|------------|------------|-----------------------------------|
|  | Total | 5,10,000/- | 5,49,600/- | Enhanced<br>by<br>Rs.39,600<br>/- |
|--|-------|------------|------------|-----------------------------------|

14. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.5,10,000/- is enhanced to Rs.5,49,600/- together with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 3222 of 2010, at the first instance and recover the same from the 1<sup>st</sup> respondent. On such deposit, the claimant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The claimant is directed to pay the court fee, if any, on the enhanced amount of Rs.39,600/-. It is made clear that the claimant is not entitled for any interest for the delay period on the amount of Rs.39,600/-, enhanced by this Court as per the order of this Court dated 14.02.2017, made in M.P. No. 1 of 2014 in C.M.A. SR. 93091 of 2014. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

maya/gsa  
To

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

2. The V Judge  
Small Causes Court  
Motor Accident Claims Tribunal  
Chennai.

C.M.A. Nos. 1588 of 2014 & 519 of 2017

VG II (CO)  
CB(29/01/2021)

Page numbers