



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1807 & 2137 of 2014

C.M.A.No.1807 of 2014

The United India Insurance Co. Ltd.,
Regional Office, IV Floor,
No.134, Greams Road,
Chennai 600 002.

... Appellant/2nd Respondent

Vs.

1.M. Sukumar

...1st Respondent/Petitioner

2.R. Krishnamoorthy

... 2nd Respondent/1st Respondent

(R2 remained exparte before the Tribunal.)

C.M.A.No.2137 of 2014

M. Sukumar

... Appellant/Petitioner

Vs.

1.R. Krishnamoorthy

2.The United India Insurance Co. Ltd.,
Regional Office, IV Floor,
No.134, Greams Road,
Chennai 600 002.

... Respondents/Respondents

(R1 remained exparte before the Tribunal.)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.04.2013, made in M.C.O.P. No.895 of 2011, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.



WEB COPY

(In C.M.A.No.1807/2014)

For Appellant : Mr. D. Bhaskaran

For Respondents : Ms. A. Subadra
for M/s. I. Malar (For R1)

(In C.M.A.No.2137/2014)

For Appellant : Ms. A. Subadra
for M/s. I. Malar

For Respondents : Mr. D. Bhaskaran (For R2)

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

C.M.A. No.2137 of 2014 is filed for enhancement of the compensation and C.M.A. No.1807 of 2014 is filed against the award dated 08.04.2013, made in M.C.O.P. No.895 of 2011, on the file of the VI Court of Small Causes, (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.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimant filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.11.2010.

5.According to the claimant, on the date of accident viz., 15.11.2010, when he was travelling as a pillion rider in a Motorcycle bearing Registration No. TN-09-AS-3016, the 1st respondent who is the rider-cum-owner of the said Motorcycle drove the vehicle in a rash and negligent manner endangering public safety and dashed against the dig and fell down at Basin Bridge Road opposite to Tamil Nadu Fire Department Training Centre. In the accident, the claimant sustained multiple and grievous injuries. The accident occurred due to rash and negligent driving by the 1st respondent, rider-cum-owner of the Motorcycle and filed the claim petition, claiming compensation against the 1st respondent as owner and 2nd respondent as insurer of the offending vehicle.

6.The 1st respondent remained exparte before the Tribunal.



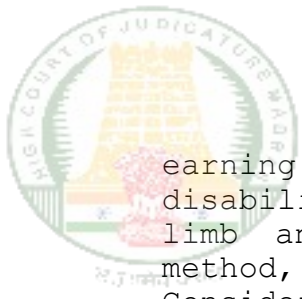
7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments of the claimant in the claim petition. According to the 2nd respondent, the 1st respondent rider of the Motorcycle did not possess valid driving license to ply the vehicle and there is no valid insurance coverage, permit and fitness certificate at the time of accident for the vehicle. The 2nd respondent also denied the insurance policy of the vehicle. The claimant has to prove his age, avocation and income, injuries sustained, disability suffered and treatment taken to claim compensation. In any event, the total compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined himself as P.W.1 and examined Doctor as P.W.2 and marked 15 documents as Exs.P1 to P15. The respondents did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.5,26,500/- as compensation to the claimant.

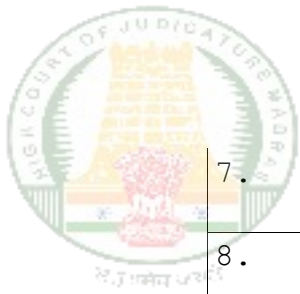
10.Against the said award dated 08.04.2013, made in M.C.O.P. No.895 of 2011, the 2nd respondent-Insurance Company filed C.M.A. No.1807 of 2014 and not being satisfied with the amounts awarded by the Tribunal, the claimant has filed C.M.A. No.2137 of 2014 for enhancement of compensation.

11.The learned counsel appearing for the claimant contended that the claimant suffered multiple injuries and fracture and due to the same, he could not work as Driver, as he was doing earlier. To prove the nature of injuries, he examined himself as P.W.1 and P.W.2 - Doctor. P.W.2 Doctor assessed that the claimant suffered 45% disability. The Tribunal erroneously reduced the same to 40%. The claimant was working as a Driver in VPM Dhall Merchant and was earning a sum of Rs.15,000/- per month and produced salary certificate, which is marked as Ex.P11. The Tribunal rejected the same and fixed the notional income of the claimant as Rs.6,000/-, which is meagre. The Tribunal ought to have fixed the monthly income of the claimant at Rs.15,000/-. P.W.2 has deposed that due to the disability, the claimant cannot drive the vehicle, movement in his right hand is restricted and he cannot lift heavy objects. The Tribunal failed to award any amount towards medical expenses and mental agony. The amounts granted by the Tribunal towards damages to clothes, transportation, extra nourishment, attendant charges, pain and suffering, loss of amenities and future



earning power. The Tribunal failed to consider that the disability assessed by P.W.2 - Doctor is only for a particular limb and not for whole body and while adopting multiplier method, the disability for whole body has to be fixed. Considering the nature of injuries and disability, the loss of earning power of the claimant is fixed as 15% for the whole body. The claimant claimed that he was earning a sum of Rs.10,000/- per month and Rs.150/- per day as batta. He filed Ex.P11 - Salary Certificate to prove the same, but failed to prove the same as per law. Hence, the Tribunal has rightly rejected Ex.P11 - Salary Certificate. The Tribunal rejecting Ex.P11, fixed the monthly income of the claimant at Rs.6,000/-. The accident is of the year 2010. The monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the claimant, a sum of Rs.8,000/- per month is fixed as notional income. Thus, the amounts awarded by the Tribunal towards loss of earning power is modified as Rs.2,16,000/- [Rs.8,000/- x 12 x 15 x 15%]. For the injuries sustained in the accident, the claimant would not have worked atleast for a period of three months. Hence, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.24,000/- [Rs.8,000/- x 3] at the rate of Rs.8,000/- per month for three months. Considering the nature of injuries and disability, the amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are enhanced to Rs.10,000/- each and the amount awarded towards loss of amenities is enhanced to Rs.30,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	12,000/-	24,000/-	Enhanced
2.	Damages to clothes	1,500/-	1,500/-	Confirmed
3.	Transportation	5,000/-	10,000/-	Enhanced
4.	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Pain and suffering	40,000/-	40,000/-	Confirmed
6.	Attendant charges	5,000/-	10,000/-	Enhanced



WEB COPY

7.	Loss of earning power	4,32,000/-	2,16,000/-	Reduced
8.	Medical expenses	5,680/-	5,680/-	Confirmed
9.	Loss of amenities	20,000/-	30,000/-	Enhanced
	Total	5,26,130/- rounded off to 5,26,500/-	3,47,180/- rounded off to 3,47,500/-	Reduced by Rs.1,79,000 /-

16. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.5,26,500/- is modified to Rs.3,47,500/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, 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.895 of 2011. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw excess amount, lying in the credit of M.C.O.P. No.895 of 2011, if the entire award amount has already been deposited by them. It is made clear that if the claimant has already withdrawn the award amount, the 2nd respondent-Insurance Company is not entitled to recover the same from the claimant. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The VI Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.



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

WEB COPY

+1cc to Mr.M.Malar, Advocate Sr.35942

C.M.A. Nos.1807 & 2137 of 2014

cnr[co]
srg 10/05/2021