



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3211 of 2014

and

M.P.No.1 of 2014

United India Insurance Company Limited,
No.134, Silingi Building,
4th Floor, Grems Road,
Chennai - 600 006.

.. Appellant/2nd Respondent

Vs.

1.A.Krishnamoorthy

2.V.Ramesh

.. Respondents/Petitioner/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.07.2014 made in M.C.O.P.No.3539 of 2011 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.A.A.Venkatesan

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 14.07.2014 made in M.C.O.P.No.3539 of 2011 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

3.The appellant is the 2nd respondent in M.C.O.P.No.3539 of 2011 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.12.2010.



4. According to 1st respondent, on 10.12.2010 at about 09.00 hours, while he was riding his motorcycle bearing Registration No. TN 04 AB 2842 from North to South along Kannan road, opposite to Madha Statue, the driver of the auto bearing Registration No. TN 04 AA 1062 belonging to 2nd respondent drove the same in a rash and negligent manner and dashed against the 1st respondent's motorcycle and caused the accident. Due to the said impact, the 1st respondent was thrown out from his motorcycle and sustained grievous injuries all over his body. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the auto respectively.

5. The 2nd respondent-owner of the auto remained exparte before the Tribunal.

6. The appellant-Insurance Company, being the insurer of the auto filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident has not occurred as alleged by the 1st respondent. The 1st respondent has to prove that driver of the 2nd respondent's auto was possessing valid driving license at the time of accident and also the 2nd respondent's auto was having valid Registration Certificate, Insurance, Permit and other vehicular records at the time of accident. The 1st respondent also contributed to the accident and hence, contributory negligence has to be fixed on the part of the 1st respondent. The appellant denied the age, avocation, income, nature of injuries and treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.N.Saichandran was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. The appellant-Insurance Company examined S.Elango, Sub-Inspector of Police as R.W.1 and marked copy of charge sheet as Ex.R1.

8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the auto belonging to 2nd respondent and directed the appellant to pay a sum of Rs.1,40,000/- as compensation to the 1st respondent.

9. Against the said award dated 14.07.2014 made in M.C.O.P.No.3539 of 2011, the appellant has come out with the present appeal.



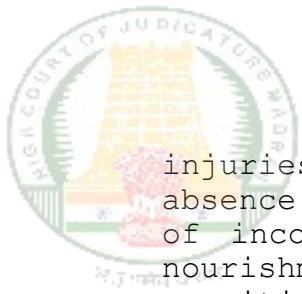
10. The learned counsel appearing for the appellant contended that the Tribunal failed to adjudicate the issue properly inspite of the evidence let in by the appellant. As per the evidence of R.W.1 and Ex.R1, the 1st respondent sustained only simple injuries. He has taken treatment only as outpatient for one day and the same was proved by Ex.P3 - OP chit filed and marked by the 1st respondent. P.W.2/Doctor has issued disability certificate without conducting any examination on the 1st respondent and assessment of disability by P.W.2/Doctor is against the medical science and guidelines. The Tribunal erroneously accepted the disability assessed by P.W.2/Doctor and granted excessive amounts for disability. The amounts awarded by the Tribunal for pain and sufferings, extra nourishment, loss of income and medical expenses are excessive and prayed for setting aside the award passed by the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent suffered fracture of left foot 5th meta tarsal bone. Due to the fracture, he experienced severe pain and facing difficulty in climbing stair case and attending day-to-day activities. The 1st respondent proved the nature of injuries and disability by examining P.W.2/Doctor. The appellant has not disproved the evidence of P.W.2/Doctor. The Tribunal considering the materials placed before it, awarded compensation under different heads, which are not excessive and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13. From the materials available on record, it is seen that it is the case of the 1st respondent that he suffered fracture of left foot 5th meta tarsal bone and took treatment at Government General Hospital, Chennai and subsequently at Puttur Bone Specialty Hospital. To prove his case, he examined himself as P.W.1 and Dr.N.Saichandran as P.W.2. P.W.2/Doctor examined the 1st respondent and certified that 1st respondent suffered 30% disability. P.W.2/Doctor deposed about the nature of injuries and disability. The appellant has not let in any evidence to disprove the evidence of P.W.2/Doctor and percentage of disability assessed by P.W.2/Doctor. The Tribunal in the absence of contra evidence, accepted the percentage of disability as assessed by P.W.2/Doctor. The 1st respondent filed Ex.P7/Puthur Chit to show that he continued his treatment conservatively. In view of the same, the compensation awarded by the Tribunal towards disability is not interfered with.

14. From the materials on record, it is seen that the 1st respondent has not proved that he lost income due to the



injuries and disability suffered by him in the accident. In the absence of any medical records and evidence with regard to loss of income, the amounts awarded by the Tribunal towards extra nourishment, pain and sufferings, loss of income and loss of amenities are excessive and hence, the same are hereby reduced to Rs.10,000/-, Rs.10,000/-, Rs.5,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under other heads are not excessive and hence, the same 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/-	5,000/-	Reduced
2.	Pain and sufferings	25,000/-	10,000/-	Reduced
3.	Transportation	2,000/-	2,000/-	Confirmed
4.	Medical expenses	3,000/-	3,000/-	Confirmed
5.	Extra nourishment and damages to clothes	25,000/-	10,000/-	Reduced
6.	Loss of amenities	10,000/-	5,000/-	Reduced
7.	Disability	60,000/-	60,000/-	Confirmed
	Total	Rs.1,40,000/-	Rs.95,000/-	Reduced by Rs.45,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,40,000/- is hereby reduced to Rs.95,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-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.3539 of 2011 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance



Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.3539 of 2011, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To

1.The V Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+lcc to Mr.A.A.Venkatesan, Advocate, S.R.No.42225

C.M.A.No.3211 of 2014

VBA(CO)
CB(27/08/2021)