

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2303 of 2017
and
C.M.P.No.12308 of 2017

United India Insurance Co. Ltd.
Third party hub
Silingi buildings
No.134, Greams road
Chennai-600 006. ... Appellant

Vs.

1.L.Raguman

2.Perumal

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2016 made in M.C.O.P.No.3801 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellant : Mr.P.Sankaranarayanan

For R1 : Mr.K.V.Muthuvisakan

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.03.2016 made in M.C.O.P.No.3801 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.3801 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai. The 1st respondent 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 08.07.2012.

3. According to the 1st respondent, on the date of accident, i.e., on 08.07.2012 at about 21.15 hours, while the 1st respondent was travelling as a pillion rider in a motorcycle at Razaak Garden road, from North to South direction, in front of Sri Gomathi Agencies, Arumbakkam, a Tata Ace, which came in the opposite direction, driven by its driver-cum-owner in a rash and negligent manner, dashed against the motorcycle and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the 2nd respondent and appellant/Insurance Company.

4. The 2nd respondent, owner-cum-driver of the Tata Ace, remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the Tata Ace vehicle was not involved in the accident. The 1st respondent ought to have cautioned the rider of the alleged motorcycle and hence, the 1st respondent has also contributed to the accident. The owner and insurer of the motorcycle were not made as parties and therefore, the claim petition is bad for non-joinder of necessary parties. The appellant/Insurance Company has also denied the age, avocation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr. Sai Chandran, was examined as P.W.2 and marked twelve documents as Exs.P1 to P12. The appellant/Insurance Company has not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, owner-cum-driver of the Tata Ace and directed the appellant/Insurance Company being insurer of the said vehicle to pay a sum of Rs.5,20,000/- as compensation to the 1st respondent.

8. Against the said award dated 24.03.2016 made in M.C.O.P.No.3801 of 2012, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to consider that the 1st respondent has not produced any income tax return to show that he suffered loss of income during treatment period and a sum of Rs.80,000/- awarded by the Tribunal towards loss of earning during treatment period is excessive. A sum of Rs.1,00,000/- awarded by the Tribunal towards future medical

expenses is excessive, when the same is not corroborated by the evidence of P.W.2/Doctor. The 1st respondent has taken treatment as in-patient in the hospital only for few days and the Tribunal erred in awarding a sum of Rs.20,000/- towards attendant charges. In any event, the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the 1st respondent made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

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

13.It is the contention of the 1st respondent that he was working as a Senior Associate in Wipro BPO, Sholinganallur, Chennai and was earning a sum of Rs.40,000/- per month. In the accident, the 1st respondent sustained fracture shaft of right femur and nailing was done. The 1st respondent examined the Doctor as P.W.2, who assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P12. He has taken treatment as in-patient in Sri Ramachandra Medical Centre from 09.07.2012 to 18.07.2012. According to the 1st respondent, due to the injuries, he lost income during treatment period. The 1st respondent marked the pay slip and bank statement as Exs.P7 and P8 respectively to show that he was on loss of pay after treatment period. A perusal of Exs.P7 and P8 reveals that subsequent to the date of accident, for the months of August and September 2012, the salary of the 1st respondent was credited. In view of the above, the contention of the appellant/Insurance Company that the 1st respondent has not produced any document or any income tax return to show that he suffered loss of income during treatment period, has considerable force. Therefore, a sum of Rs.80,000/- awarded by the Tribunal towards loss of earning during treatment period is liable to be set aside and it is hereby set aside. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal under all other heads are just and reasonable 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 or reduced
1.	Transportation and extra nourishment	50,000	50,000	Confirmed
2.	Medical expenses	50,000	50,000	Confirmed
3.	Future medical expenses	1,00,000	1,00,000	Confirmed
4.	Attendant charges	20,000	20,000	Confirmed
5.	Damage to clothes and pain & suffering	50,000	50,000	Confirmed
6.	Disability	1,50,000	1,50,000	Confirmed
7.	Loss of earning during treatment period	80,000	-	Set aside
8.	Loss of amenities	20,000	20,000	Confirmed
	Total	5,20,000	4,40,000	Reduced by Rs.80,000/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.5,20,000/- awarded by the Tribunal is hereby reduced to Rs.4,40,000/- 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. On such deposit, the 1st respondent is permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.3801 of 2012 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

kj

To

The Motor Accident Claims Tribunal
The II Judge
Small Causes Court, Chennai.

Copy To
The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.P.Sankaranarayanan, Advocate SR.No.17677

+1cc to Mr.K.V.Muthuvisakan, Advocate SR.No.17685

C.M.A.No.2303 of 2017
and

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VSN II(CO)
GMY(19/04/2021)

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