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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.1231 of 2010 and
MP.Nos.1 & 2 of 2010

New India Assurance Co. Ltd.,
No.2, Woods Road, Anna Salai,
Chennai 600 082 ... Appellant/2nd Respondent

Versus

1.B.Pushpamala ... 1st Respondent/1st Respondent
(already set exparte in MCOP.2867 of 2006
her appearance may be dispensed with)
2.V.Gnanasekar ... 2nd Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.11.2009 and made in M.C.O.P.No.2867 of 2006 on the file of the Motor Accidents Claims Tribunal II Court, Small Causes Court, Chennai

For Appellant : M/s.C.Sangamithirai

For Respondents

For R2 : Mrs.P.T.Salim Fathima
R1 : Exparte

J U D G M E N T

This appeal has been laid as against the judgment and decree dated 17.11.2009 and made in M.C.O.P.No.2867 of 2006 on the file of the Motor Accidents Claims Tribunal II Court, Small Causes Court, Chennai, thereby awarded the compensation to the tune of Rs.4,51,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.



3. The case of the claimant is that on 15.12.2005, when he was walking on the left hand side of the road at NVN Nagar Road Junction, the driver of the car owned by the first respondent herein drove in a rash and negligent manner and dashed against the claimant, due to which his right leg below the knee was fractured. He also sustained injury on his chest and head. Immediately, he had been taken to Sri Devi Hospital and admitted as inpatient till 16.12.2004. Against medical advice, he was discharged from hospital and thereafter on the same day, he was admitted in Bone and Joint Hospital for further treatment. There, he had undergone surgery on his right leg due to the injuries sustained in the accident. At the time of accident he was 30 years old and he was working as Salesman in Tasmac and he was earning a sum of Rs.5,000/- per month. Therefore, the claimant filed claim petition seeking compensation at Rs.11,00,000/-.

4. Resisting the same, the second respondent filed counter stating that the accident took place only on the rash and negligent action of the claimant and not due to the rash and negligent driving of the driver of the first respondent and as such sought for dismissal of the claim petition.

5. On the side of the claimant, examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.7. On the side of the respondents, neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened liability on the respondents and awarded compensation for a sum of Rs.4,51,000/-. Aggrieved by the same, the second respondent came forward with the present appeal in respect of quantum.

6. The learned counsel appearing for the appellant submits that the Tribunal awarded a sum of Rs.50,000/- under the head of pain and sufferings to the loss of income to the family member in attending the claimant. Again the Tribunal awarded a sum of Rs.20,000/- under the head of pain and sufferings. Though there is no evidence to show that the claimant was not married at the time of accident, the Tribunal awarded a sum of Rs.1,00,000/- under the head of loss of expectation of proper marital alliances. The Tribunal also awarded a sum of Rs.1,00,000/- under the head of mental agony and torture due to limping and shortening of leg. Therefore, she prayed for deduction of the award amount awarded by the Tribunal as compensation.

7. Per contra, the learned counsel appearing for the claimant submitted that due to accident, he lost two inches of his right leg. Therefore, he could not even continue his



avocation. In fact, the Tribunal failed to award any attender charges and also amenities for the injury sustained by the claimant. Insofar as other heads are concerned, the Tribunal rightly awarded compensation and does not require any reduction in the compensation.

8. Heard Mr.C.Sangamithirai, learned counsel appearing for the appellant and M/s.P.T.Salim Fathima, learned counsel appearing for the second respondent herein.

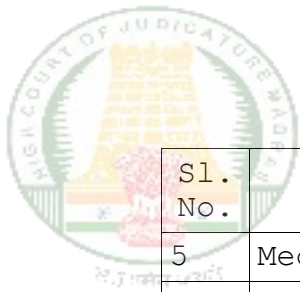
9. The present appeal has been preferred in respect of quantum awarded by the Tribunal and as such no need to traverse on the fact of law.

10. The claimant examined PW2, the doctor who assessed the disability of the claimant at 25%. He opined that two centimeters of right leg was shortened and due to which he cannot fold his leg and he cannot use indian toilet. He also cannot walk and run. Therefore, he assessed the disability at 25%. On perusal of the discharge summary which was marked as Ex.P3 revealed that he sustained fracture on his right leg and he had undergone surgery. The fracture assessed as Grade II Compound Fracture both bones in right leg distal 1/3 and thereby shortening of 1/3 right leg distal.

11. Though the claimant produced medical bills, he failed to produce final bill issued by the hospital, in which he had undergone surgery. He was admitted initially on 15.12.2005 at Sri Devi Hospital and thereafter on 16.12.2005, he was shifted to Bone and Joint Hospital and Research Institute Private Limited, Anna Nagar, Chennai. Thereafter, he was discharged on 28.12.2005. He had taken treatment for six months and he had also undergone physiotherapy. Further in respect of permanent disability, though PW2 assessed disability at 25%, the Tribunal awarded only Rs.25,000/- by granting Rs.1,000/- per percentage and it is liable to be increased as Rs.2,000/- per percentage.

12. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earnings	Rs.60,000/-	Rs.60,000/-
2	Transport expenses	Rs.10,000/-	Rs.20,000/-
3	Extra nourishment	Rs.20,000/-	Rs.20,000/-
4	Damaged to dress and articles	Rs.1,000/-	Rs.1,000/-



Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
5	Medical Expenses	Rs.25,000/-	Rs.25,000/-
6	Pain and suffering to the loss of income to the family member in attending the petitioner	Rs.50,000/-	NIL
7	Mental agony and torture due to limping and shortening of leg	Rs.1,00,000/-	NIL
8	Future medical transport expenses	Rs.40,000/-	NIL
9	Loss of expectation of proper marital alliances	Rs.1,00,000/-	Rs.1,00,000/-
10	Compensation for pain and suffering	Rs.20,000/-	Rs.50,000/-
11	Permanent disability	Rs.25,000/-	Rs.50,000/-
12	Attender charges	NIL	Rs.15,000/-
13	Future medical expenses	NIL	Rs.50,000/-
	Total	Rs.4,51,000/-	Rs.3,91,000/-

13. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is modified from Rs.4,51,000/- to Rs.3,91,000/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The appellant and the first respondent herein are directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the claimant /2nd respondent herein permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) The claimant is not entitled to any interest for the condoned delay (default) period, if any.



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(vi) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (Accounts)

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Sub Assistant Registrar

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To

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

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

+1cc to M/s.C.Sangamithirai, Advocate Sr.No. 25779

+1cc to M/s.M.Swamikkannu, Advocate Sr.No. 25775

C.M.A.No.1231 of 2010

GP (CO)
PR (21/10/2021)