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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.2931 of 2011

M/s. United India Insurance Co Ltd,
No.1090, Poonamallee High Road,
Periyamet, Chennai -3. ... Appellant/2nd Respondent

..vs..

1.S.Baskar ...1st Respondent/Petitioner

2.B.Rathinavel ...2nd Respondents/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.11.2010 made in M.C.O.P.No. 9 of 2008, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.Michael Visuvasam

For Respondents : Ms.Ramya V.Rao -R1
For Mr.A.N.Viswanathan Rao
Notice unserved -R2

J U D G M E N T

Dissatisfied with the judgment and decree, dated 10.11.2010, passed by the tribunal awarding compensation of Rs.1,96,000/- along with interest at the rate of 7.5% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimant/ 1st Respondent herein that on 06.06.2006 at about 16.00 hrs the claimant was travelling as pillion rider in the motor cycle bearing Reg.No.TN04-W-6329, when nearing Chengalpattu to Vallipuram Salai, the rider of the motorcycle rode the same in a rash and negligent manner and hit against the another Motorcycle bearing Reg.No. TN21-U-5137. As a result, the claimant sustained grievous injuries in all over the body. The Claimant/1st Respondent filed a claim petition before the tribunal, claiming compensation of Rs.6,00,000/- for the disability and the injuries sustained by him in the said accident. After analyzing both oral and documentary evidences, the Tribunal has awarded Rs.1,96,000/- as total compensation



along with interest at the rate of 7.5% p.a from the date of petition till realization.

3. The learned counsel appearing for the appellant/Insurance company has submitted that the tribunal has arbitrarily fixed the income of the 1st respondent at Rs.6000/- in the absence of any documentary evidence. The tribunal has failed to appreciate the excessive assessment of disability at 30% by PW2 one Dr.Saravanabhavanantham after a period of four years, namely 10% each for anticonvulsant therapy, head ache and vertigo, when there is no record to show the above defects. The learned counsel for the appellant further submitted that the tribunal arbitrarily reduced the disability at 25% and 20% assessed by PW2 & PW3. The compensation granted by the tribunal for disability at Rs.90,000/- is very excessive and the sum awarded under other heads are also excessive and liable to be set aside.

4. On the other hand, the learned counsel appearing for the 1st respondent/claimant submitted that the tribunal has awarded the said compensation based on the evidence and documents, therefore, the award passed by the tribunal does not warrants any interference by this Court.

5. Heard the learned counsel appearing for the appellant/ Insurance Company and the learned counsel appearing for the 1st respondent/ claimant and perused the materials available on record.

6. Before the tribunal, on the side of the claimants three witnesses were examined as P.W.1 to P.W.3 and marked ten documents Exhibits P1 to P10. No witness were examined and no documents were marked on the side of the respondents.

7. On a perusal of records, it is seen that the claimant/1st respondent herein had initially lodged a complaint against the rider of the motorcycle bearing Reg.No. TN21-U-5137 which came in the opposite direction. But during chief examination, he deposed that the rider of the motorcycle in which he travelled as a pillion rider was responsible for the accident. There was no contra evidence let in for the above evidence. Hence the tribunal fixed the negligence on the part of the rider of the motorcycle, in which the claimant travelled and directed the insurer of the said vehicle who is the appellant herein to pay the compensation. The said decision of the tribunal is based on the evidence of PW1, therefore this Court also confirms the negligence and liability fixed by the tribunal.

8. As far as quantum of compensation awarded by the tribunal is concerned, it is seen from the award that two doctors viz., PW2 & PW3 had assessed the disability sustained by the claimant/1st respondent and issued two disability certificates mentioning disability at 30% & 20% and the same were marked as Ex. P8 and Ex.P10 respectively. The tribunal



has reduced the disability assessed by PW2 to 25% from 30% and the disability assessed by PW3 to 20% from 25%, total disability taken by the tribunal is 45%. Hence, by fixing Rs.2000/- per percentage, the tribunal has awarded a sum of Rs.90,000/- towards disability. This Court by taking note of the disability, which is partial in nature and considering the medical records, is of the opinion that fixing 25% towards the disability would be reasonable. The learned counsel appearing for the 1st respondent/claimant also agreed to fix 25% disability. Accordingly, by fixing Rs.2,000/- per percentage, this court modifies the compensation awarded by the tribunal from Rs.90,000/- to Rs.50,000/-. In view of the injuries sustained by the claimant, this Court feels that the sum awarded under Loss of Income for six months is excessive and the same is reduced to three months. Accordingly, the said compensation is modified as 'Loss of income for three months' at Rs.18,000/- (Rs.6000/- per month). The compensation awarded for 'Medical Expenses' at Rs.27,000/- is proved through Ex.P6, hence the said amount is confirmed. The tribunal has not awarded any amount for 'Loss of Amenities', therefore, a sum of Rs.5,000/- is granted under the said head. In view of the injuries, disability and the treatment taken by the 1st respondent/claimant, the compensation awarded by the tribunal under the head 'Pain and suffering' is reduced from Rs.25,000 to Rs.15,000/- and the sum awarded under other heads viz, Transport expenses, Extra Nourishment, Attender Charges are confirmed. Thus, the total compensation awarded by the tribunal is modified by this Court under various heads as follows;

Heads	Compensation granted by the Tribunal Rs.	Compensation modified by this Court
Loss of Income	36,000/-	18,000 (6000 x 3)
Disability	90,000/-	50,000/- (2000 x 25)
Transport expenses	5000	5,000
Extra Nourishment	10,000	10,000
Medical Expenses	27,000	27,000
Attender charges	3,000	3,000
Pain and suffering	25,000	15,000
Loss of amenities	...	5,000
Total	1,96,000	1,33,000

9. In the result, this Civil Miscellaneous Appeal is partly allowed, by reducing the total amount of compensation from Rs.1,96,000/- to Rs.1,33,000/- along with interest at the



rate of 7.5% per annum. The 1st respondent/claimant is entitled for compensation only as per the modification made by this Court.

10. It is represented by the learned counsel for the appellant/insurance company that the entire award amount has been deposited before the tribunal. In view of the same, the appellant/insurance company is permitted to withdraw the remaining compensation amount by filing appropriate application before the tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.Michael Visuvasam, Advocate, S.R.No.13109

CMA.No.2931 of 2011

MG(CO)
GMY(27/08/2021)