



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2021

PRONOUNCED ON : 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.270 of 2015

and

M.P.No.1 of 2015

United India Insurance Company Limited,
Motor Third Party Claims Cell Office,
No.134, Silingi Buildings,
4th Floor, Greams Road,
Chennai - 60006.

... Appellant/2nd Respondent

Vs.

1.V.Kanagaraj

... 1st Respondent/Petitioner

2.B.Samvel Durai Pandian

...2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed in MACTOP.No.3925 of 2012, on the file of the Motor Accidents Claims Tribunal (learned II Judge, Court of Small Causes) at Chennai, dated 19.08.2014.

For Appellant : Mr.Sankaranarayanan

For R1 : Mr.L.Baskaran for Sundarraja Mukund

For R2 : Mr.N.Raja Senthoo Pandian

JUDGMENT

(This case has been heard though video conference)
The Insurance Company is the appellant herein.

2.The brief facts of the case are as follows:

On 11.05.2012 at 12.30 p.m., when the first respondent herein was riding his two wheeler bearing registration No.TN-02-AB-5616 from South to North direction on Anna Nagar 5th Avenue, 'Y' Block Road junction, the second respondent's motor cycle bearing Registration No.TN-05-F-5627 came in a rash and



negligent manner and hit the first respondent's motor cycle, thereby, the claim petitioner/first respondent herein has sustained grievous injuries. Hence, the claim petitioner has filed a petition in MCOP.No.3925 of 2012, claiming compensation and the Tribunal has awarded a sum of Rs.7,55,700/- as compensation. Aggrieved against the same, the Insurance Company has filed this Civil Miscellaneous Appeal on the point of quantum.

3.Factum of the accident, manner of the accident, rash and negligence driving of the driver of the offending vehicle are not under challenge and the same is hereby confirmed.

4.Before the Tribunal, on behalf of the petitioner, claim petitioner viz., V.Kanagaraj was examined himself as PW1 and Dr.N.Saichandran was examined as PW2 and marked the documents as Exs.P1 to P20. On the side the respondents, no oral evidence has been examined and no documentary evidence has been marked.

5.Heard Mr.P.Sankaranarayanan, learned counsel for the appellant on the point of quantum, Mr.L.Baskaran, learned counsel for the first respondent and Mr.N.Raja Senthoo Pandian, learned counsel for the second respondent and perused the materials placed on record.

6.As could be seen from Ex.P4/Copy of Accident Registrar and Ex.P5/Discharge Summary, claim petitioner/first respondent herein has suffered injury. PW2/Dr.N.Saichandran, has marked Ex.P17/disability certificate. On a combined reading of Exs.P4, P5 & P17, this Court finds that Ex.P4/Accident Register copy issued by Soundarapandiyan Bone and Joint Hospital, Chennai shows that the claim petitioner/first respondent herein had sustained injuries due to the accident, therefore he is entitled to receive compensation for the same; Ex.P5/discharge summary reads to the effect that the claim petitioner/first respondent herein had taken treatment as inpatient at Soundarapandiyan Bone and Joint Hospital, Chennai from 11.05.2012 to 23.05.2012 [for a period of 13 days]. The claim petitioner had suffered Grade-II Open Fracture of Proximal tibia right leg and Fracture of right Zygoma and he had undergone surgery on 11.05.2012, whereby ORIF with plating was done; Ex.P17/disability certificate issued by PW2/Dr.N.Saichandran also speaks about the same.



7. On a perusal of the records, it is seen that the age of the injured was 42 years at the time of the accident, he was said to have doing real-estate business and he has marked Ex.P14/copy of the Income Tax Return for the assessment year 2012 – 2013 as if the same was filed in the month of August after accident and hence, the same is not considered for the assessment of the income.

8. On a close reading of Ex.P20/copies of Income Tax returns for the assessment years 2009-2010, 2010-2011, 2011-2012, this Court finds that the average annual income of the injured is Rs.2,35,668/-, Rs.2,87,690/-, Rs.2,78,351/- respectively and the Tribunal has fixed the income of the claim petitioner at Rs.12,000/- per month. Taking note of the evidence of PW2/doctor, the Tribunal has fixed the disability at 20% and taking note of Grade-II Open Fracture of Proximal tibia right leg and fracture of right Zygoma, the Tribunal has awarded a sum of Rs.4,03,200/- as compensation under the head of loss of earning power.

9. According to the appellant herein/Insurance Company, the compensation awarded by the Tribunal is excessive. The case is before the decision of [Erudhya Priya Vs. State Transport Corporation Ltd.,] reported in 2020-SCC Online SC 601, and hence, this Court finds that the compensation awarded by the Tribunal cannot be termed as excessive.

10. Furthermore, after deducting medical expenses as per Ex.P11/letter from Apollo Munich Health Insurance, the Tribunal has awarded a sum of Rs.60,000/- as compensation under the head of medical expenses. Taking note of the nature of the Injury and resultant effect of the loss of earning capacity, the Tribunal has awarded compensation under the head of disability as well as earning capacity as stated supra.

11. This judgment was pronounced by the Tribunal as per the decision reported in [Erudhya Priya Vs. State Transport Corporation Ltd.,] reported in 2020-SCC Online SC 601. On re-assessment of the entire situation, this Court finds that more or less, the compensation comes to the same amount and hence, this Court is of the considered view that the compensation as such awarded by the Tribunal of Rs.7,55,700/- is found to be reasonable. Though attendant charges & loss of amenities are



not given separately, a higher sum of Rs.50,000/- was granted under the head of pain and sufferings.

12.Hence, I do not find force in the contention raised by the first respondent/claim petitioner that the compensation may be enhanced by the Court, since under the head of pain and sufferings, Rs.50,000/- was awarded and hence, reading from the decision of the Erudhaya Priya Case (cited supra), the compensation as awarded by the Tribunal as to the quantum need not be interfered with. In this view of the matter, the compensation awarded by the Tribunal under various heads is hereby confirmed.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 19.08.2014 passed by the Motor Accidents Claims Tribunal, learned II Judge, Court of Small Causes at Chennai, in M.A.C.T.O.P.No.3925 of 2012, is confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

14.If the award amount with accrued interest has not been deposited, the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.A.C.T.O.P.No.3925 of 2012, on the file of the Motor Accidents Claims Tribunal, (learned II Judge), Court of Small Causes at Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent herein/claimant is permitted to withdraw the same, less the amount already withdrawn, if any.

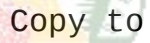
Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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



+1CC to Mr.Sankaranarayanan, Advocate, SR.No. 24258

SR II(CO)

C.M.A.No.270 of 2015