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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 18.02.2021]

[PRONOUNCED ON : 25.03.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.460 and 1120 of 2016
and
C.M.P.No.3515 of 2016

The United India Insurance Company Ltd.,
Motor Third Party Claims Hub
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

... Appellant in C.M.A.No.460/2016

Muthusivam

... Appellant in C.M.A.No.1120/2016

.. Vs ..

1. Muthusivam

2. Sainesh Sathia Seelan ... Respondents in C.M.A.No.460/2016

1. Sainesh Sathia Seelan

2. United India Insurance Company Ltd.,
Motor Third Party Claims Hub
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

... Respondents in C.M.A.No.1120/2016

Prayer in both C.M.As.: Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.02.2015 made in M.C.O.P.No.1990 of 2013 on the file of the Motor Accidents Claims Tribunal (V Court of Small Cases), Chennai.

In C.M.A.No.460/2016

For Appellant : Mr.A.Dhiraviyanathan

For R-1 : Mr.F.Terry Chellaraja

For R-2 : Mr.T.G.Balachandran



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In C.M.A.No.1120/2016

For Appellant : Mr.F.Terry Chellaraja
For R-1 : Mr.T.G.Balachandran
For R-2 : Mr.A.Dhiraviyanathan

COMMON JUDGMENT

C.M.A.No.460 of 2016 is preferred by the United India Insurance Company Limited challenging the award passed in M.C.O.P.No.1990 of 2013 on the point of quantum of compensation, while C.M.A.No.1120 of 2016 is preferred by the claimant seeking enhancement of compensation.

2. The factum of the accident, manner of the accident and negligence on the part of the driver of the offending vehicle are not in dispute and hence, the same are hereby confirmed.

3. Learned counsel for the appellant in C.M.A.No.460 of 2016/insurance company would contend that the compensation awarded by the Tribunal is excessive especially under the headings of transportation, pain and sufferings and loss of amenities.

4. Per contra, learned counsel appearing for the appellant in C.M.A.No.1120 of 2016/claimant would contend that the Tribunal ought to have adopted multiplier method, as the claimant had suffered loss of earning capacity and hence, seeks for enhancement of compensation.

5. Before the Tribunal, on the side of the injured/claim petitioner, he examined himself as P.W.1 and Doctor was examined as P.W.2 and also marked the discharge summaries as Exs.P.2, P.3 and P.4, issued by Government Hospital, Chengalpet; Sri Renga Hospital, Chengalpet; and Sushrushah Hospital respectively.

6. On a perusal of Ex.P.2-Discharge Summary, it is seen that the claim petitioner sustained both bone fracture in left leg and he took treatment in Government Hospital, Chengalpet from 15.02.2012 to 16.02.2012 and he was treated conservatively.



As per Ex.P.3-Discharge Summary issued by Sri Renga Hospital, Chengalpet, it is clear that the claim petitioner has taken treatment as an inpatient in the said Hospital from 16.12.2012 to 22.12.2012 for wound debridement interlocking nail application and as per Ex.P.4-Discharge Summary, the claim petitioner has taken treatment as an inpatient in Sushrushah Hospital from 16.02.2013 to 19.02.2013 and proximal locking screws were removed. Hence, I find that the claim petitioner had underwent two surgeries as could be seen from Exs.P.3 and P.4 Discharge Summaries.

7. Furthermore, P.W.2 - Dr. Saichandharan, in his deposition, could depose that the claim petitioner had sustained compound injury in his left leg causing fracture both bones in left leg for union and he was surgically treated for the tibial bone with nail and screws and during the course of treatment, one screw in the upper end of the tibial bone was removed due to pain; the other bone tibia mal united at present; the nail is still in the bone with distal screws present causing expanded mal union of the tibial bone. The claim petitioner also has traumatic arthritis of left knee causing movements of the left knee on bending and rotating by 30 degrees from the normal 120 degrees. At present left leg swollen and painful and movement restricted which has internal fixation needs to be removed at an early date.

8. After perusing the evidence of P.W.2-Doctor and also the discharge summaries Exs.P.2, P.3 and P.4, I find that the claim petitioner had sustained injury in the left leg causing fracture both bones in left leg and initially, he was treated conservatively in Government Hospital at Chengalpet, subsequently, he was treated in Sri Renga Hospital, Chengalpet and in Sushrushah Hospital.

9. On a perusal of evidence of P.W.2-Doctor, it is seen that the claim petitioner has traumatic arthritis of left knee causing movements of the left knee on bending and rotating by 30 degrees from the normal 120 degrees and hence, he has assessed the disability at 50%. The Tribunal has rightly fixed the disability at 45% and taking into consideration the date of the accident being 15.12.2012, the Tribunal has awarded a sum of Rs.1,35,000/- under the head of disability by fixing a sum of Rs.3,000/- per percentage of disability. I find that the said sum awarded under the head of disability is just and reasonable and the same is confirmed.



10. On the point of loss of earning during the period of treatment, after going through the evidence of P.W.2-Doctor and the discharge summaries referred to above, I find that the claim petitioner, was a trainee in production department of FORD company and was earning a sum of Rs.8,000/- per month. Ex.P.10 is the Provisional Certificate for holding of Diploma in Electricals and Electronics. Ex.P.7 is the contract of training entered into by the claim petitioner with Ford Company. Ex.P.8 is the ID card. Ex.P.9 is the Pay Slip showing that he was receiving salary of Rs.8,878/-.

11. According to the claim petitioner, he has rejoined the office. However, he could not be able to attend the office for six months. The Tribunal has accepted his case and granted a sum of Rs.53,400/- (Rs.8,900/- x 6) towards loss of earning during the period of treatment particularly for a period of six months. I find that the Tribunal has erred in granting the above said amount for six months under the head of loss of earning, in the absence of any positive evidence to show that the claim petitioner was not attending office for six months. Taking into consideration the nature of the injuries sustained by the claim petitioner as reflected in the discharge summaries marked as Exs.P.2, P.3 and P.4 and as spoken to by P.W.2-Doctor, the claim petitioner could have lost his income only for a period of four months. Accordingly, it is just and reasonable to award a sum of Rs.35,600/- (Rs.8,900/- x 4 = Rs.35,600/-) towards loss of earning during the period of treatment.

12. On the point of loss of future earning capacity on account of permanent disability, though the claim petitioner states that he was unable to go for any avocation after the accident, no evidence was produced to prove the same. Further, no continuous treatment medical records were also filed. Claimant was continuing in job after the accident and has not lost his job after his treatment. Hence, the question of applying multiplier method and assessing his loss of earning power held does not arise. Hence, I find that the contention raised by the claim petitioner that due to the injuries suffered by him in the accident, he has lost his earning capacity is not substantiated by any medical records. In fact, there is no evidence in support of the same and therefore, the Tribunal has rightly rejected the said plea by assigning reason that the claim petitioner was continuing in job after the accident and he has not lost his job after his treatment. Therefore, the question of future loss of earning capacity does not arise and hence, the question of applying multiplier method for assessment of loss of earning power, on facts and circumstances of the case, also does not arise and the finding rendered by the



Tribunal in this regard is hereby confirmed. After perusing the judgment of the Tribunal in awarding compensation under the conventional heads, I find that the same are on the higher side, in view of the injuries sustained by the claim petitioner. Accordingly, the compensation awarded by the Tribunal is reassessed as under:-

Sl. No	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Transportation, nourishing food and miscellaneous expenditure	Rs. 50,000/-	---
2.	Transportation charges	---	Rs. 20,000/-
3.	Nutrition and extra nourishment	---	Rs. 15,000/-
4.	Miscellaneous expenditure	Rs. 600/-	Rs. 600/-
5.	Attender Charges	Rs. 10,000/-	Rs. 5,000/-
6.	Medical Expenses as per Ex.P.5	Rs. 66,000/-	Rs. 66,000/-
7.	Disability	Rs. 1,35,000/-	Rs. 1,35,000/-
8.	Loss of earning during the period of treatment	Rs. 53,400/-	Rs. 35,600/-
9.	Damages to pain and sufferings and trauma	Rs. 75,000/-	Rs. 25,000/-
10.	Loss of amenities (Loss of matrimonial aspects)	Rs. 75,000/-	Rs. 30,000/-
11.	Future Medical expenses	Rs. 75,000/-	Rs. 50,000/-
	Total	Rs. 5,40,000/-	Rs. 3,82,200/-

13. It appears from the award passed by the Tribunal that the Tribunal has committed calculation error while arriving at the compensation and the actual compensation that should have been awarded to the claimant is Rs.5,40,000/- instead of Rs.4,65,000/-.

14. In the result,

[i] C.M.A.No.460/2016 preferred by the insurance company is partly allowed and the



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compensation awarded by the Tribunal is reduced to Rs.3,82,200/- from Rs.5,40,000/-.

[ii] C.M.A.No.1120 of 2016 preferred by the claimant stands dismissed.

[iii] The interest granted by the Tribunal at 7.5% stands confirmed.

[iv] The appellant in C.M.A.No.460/2016-Insurance Company is directed to deposit the modified amount along with interest at the rate of 7.5% per annum from the date of claim petition, less the amount already deposited, if any, to the credit of M.C.O.P.No.1990 of 2013 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

[v] On such deposit being made, the first respondent in C.M.A.No.460 of 2016/claimant is permitted to withdraw the modified amount with proportionate interest, less the amount already withdrawn, if any.

[vi] Consequently, connected Miscellaneous Petition is closed.

[vii] There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. V Judge,
Motor Accidents Claims Tribunal,
Court of Small Cases,
Chennai.



2. United India Insurance Company Ltd.,
Motor Third Party Claims Hub
Silingi Building, 4th Floor,
No.134, Greaves Road,
Chennai - 600 006.

3. The Section Officer,
V.R. Section, High Court,
Madras.

Judgment in
C.M.A.Nos.460 and 1120/2016

RR(CO)
SU(28/09/2021)