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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1102 of 2017

and

CMP No.5485 of 2017

United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai 600 013.

...Appellant/2nd Respondent

Vs

1.K.Suresh
2.A.Arujunan
3.Sathiamoorthy

...Respondents/Petitioner & Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.06.2016 made in M.C.O.P.No.4379 of 2012 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.Amar D.Pandiya for R1
Mr.M.Rajeswaran for R2
for M/s.Nathan & Assoc.
R3 steps not taken

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the first and second respondents.

2.The appeal is filed by the Insurance Company challenging the award passed by the Tribunal more particularly, the quantum.

3.The facts of the case is that on 27.08.2012 midnight, at Thirumangalam 100 feet road, opposite to Anna Nagar west bus depot, when the claimant was proceeding from south to North on



his motor cycle bearing Registration No.TN 01 T 1238, another motor cycle bearing Registration TN 05 AD 7421 proceeding in the opposite direction from North to South rash and negligently dashed against the petitioner's motor cycle. The petitioner sustained severe injury and was admitted in the hospital for fracture of lateral tibial condyle left knee, facial and head injury. He was treated at bone and joint hospital, Anna Nagar. Fixing the negligence on the part of the opposite motor cycle and its insurer, claim petition for a sum of Rs.6,00,000/- was filed.

4.Challenging the claim, the Insurance Company filed counter stating that the claim petition against the Insurance Company is not maintainable, since there is a policy violation, being owner of the offending vehicle had allowed the rider without proper license and that there is also evidence to show that he was under the influence of alcohol. Further, the claim of Rs.6,00,000/- was also out of schedule, excessive and exorbitant.

5.The Tribunal has awarded a total sum of Rs.5,35,000/- under various heads.

6. The said award is assailed on the ground that for the same injury, the Tribunal has awarded compensation under different heads, particularly, while the claimant has alleged that he has sustained 50% partial disability, the Tribunal has awarded Rs.1,35,000/- for disability as well as Rs.2,34,000/- towards loss of earning capacity by fixing 10% loss of earning power. Similarly, very huge amount has been granted as compensation under the heads of transport, pain and suffering and loss of amenities. Learned counsel for the appellant submitted that the Tribunal either ought to have awarded compensation for physical disability or should have paid compensation under the loss of earning capacity by applying multiplier. Awarding compensation under both the heads amounts to duplication of award for the same damages.

7.Per contra, the learned counsel for the claimant/respondent submitted that there is no bar in awarding compensation applying split multiplication theory. The doctor who has examined the claimant has stated that the claimant suffers malunited fracture and having pain and stiffness of left leg and knee joint, his movements are restricted. He is difficult to walk, climb and cross his legs. The claimant, being a Conductor by profession, the said disability will have bearing on his earning capacity and therefore, the Tribunal besides awarding Rs.1,35,000/- for the physical disability, fixing the disability at the rate of 45%, has also awarded an additional compensation of Rs.2,34,000/- towards loss of earning capacity.



8. This Court on considering the evidence and the submission made by the counsel finds that the injury sustained by the claimant will not have any bearing in his earning capacity. Even according to his own evidence, the fracture after treatment has mal united and there is no evidence that it has impaired his earning capacity. Though he claimed that he is not able to walk and execute his work as Conductor, taking note of the injury and the treatment taken, it is not a fit case to apply multiplier. Therefore, as pointed out by the learned counsel appearing for the appellant, a sum of Rs.2,34,000/- awarded under the head of loss of future earning capacity is nothing but duplication and excessive. As far as the compensation under other heads, this Court finds that the award is commensurate to the nature of the injury. Therefore, this Court is of the opinion that no further interference in the award is required. Under the other heads, the award of the Tribunal is confirmed.

9. Accordingly, the award of the Tribunal is modified and scaled down from Rs.5,35,000/- to Rs.3,01,000/- with 7.5% interest from the date of petition till the date of deposit.

10. Learned counsel for the appellant states that pursuant to the order of this Court, the entire award amount along with accrued interest already been deposited and the respondent/claimant was permitted to withdraw 50% of it. If it is so, the Insurance Company is permitted to withdraw the excessive amount lying in the MCOP account and the claimant is permitted to withdraw the award amount with accrued interest as per the order passed in CMA No.1102 of 2017 on appropriate application.

11. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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



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

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+1 CC to Mr.S.Ravi Kumar, Advocate sr 7234
+1 CC to Mr.C.Paranthaman, Advocate sr 7184
+1 CC to M/s. Nathan & Associates sr 7268.

CMA NO.1102 of 2017

SRI (CO)
SP(11/08/2021)