IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.268 of 2020

M/s.United India Insurance Co. Ltd.,
No.280, Ooty Main Road,
Mettupalaym. ...appellant

Vs.

1. R.Manickam
2. V.Radhakrishnan
3. R.Sathishkumar ...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.09.2019 made in MCOP.No.412 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

For Appellant	:	Mr.S.Arunkumar
For Respondents		
for R1	:	Mr.K.Myilsamy
for R2	:	Notice returned
for R3	:	No Appearance

JUDGMENT

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

Aggrieved by the award of the Tribunal, granting a sum of Rs.23,04,000/- for the disability suffered by the first respondent/claimant, in a road accident that occurred on 23.01.2009, the Insurance Company is on appeal.

2. The claimant sought for a compensation of a sum of Rs.60,00,000/- for the disability suffered by him due to the injuries sustained by him in the road accident. According to the claimant, while he was travelling in his TVS XL Motorcycle bearing Registration No.TN-38Y-7399 from South to North direction near Thoppampatty junction on Kovai-Mettupalayam Road, the second respondent drove the motorcycle bearing Registration No.TN-40-A-0583, owned by the third respondent, in a rash and negligent manner and hit his vehicle from behind, resulting in grievous injures, which lead to 100% disability.

3. The claimant was an industrialist and due to the accident, he is unable to do any work resulting in total loss of his income earning capacity. Claiming that the claimant was running an Industry called Sri Senthilkumar Industries and earning Rs.30,000/- per month, he sought for Rs.60 Lakhs as compensation.

4. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner as suggested by the claimant. It was further contended that the claim is exaggerated and belated also.

5. During trial, the claimant had produced several medical bills running to the tune of Rs.25,98,173.47. As rightly observed by the Tribunal that the Insurance Company fortunately woke up and examined the persons, who were said to have issued those bills and most of them, as expected, deposed that they had not issued those bills. Therefore, the Tribunal blamed the claimant for attempting to place false evidence before the Court. The Tribunal, however let off the claimant with a severe warning as it found that the production of such fake bills was due to the ill advice.

6. The Tribunal concluded that there was negligence on the part of the driver of the offending vehicle/second respondent as FIR was also filed against the driver of the said vehicle. Though there was some delay in filing the FIR, the driver of the offending vehicle appeared before the Criminal Court and pleaded guilty. Therefore, the Tribunal concluded that there was negligence on the part of the driver of the offending vehicle and as insurer of the vehicle, the appellant Insurance Company is liable to pay the compensation. As the driver of the offending vehicle did not have driving licence at the time of the accident, the Tribunal ordered pay and recovery.

7. On quantum, the Tribunal rejected the claim made on the fake medical bills. The Tribunal by adopting a notional income of Rs.8,000/-, applying a multiplier of 11, arrived at the Loss of Earning at Rs.10,56,000/-. The Tribunal also awarded a sum of Rs.96,000/- towards Loss of Income during the treatment period and Rs.3,00,000/- as compensation for Permanent Disability, Rs.1,00,000/- each for Loss of Amenities and Pain and Sufferings and Rs.4,00,000/- for Medical Expenses on the basis of the Medical Bills and Rs.1,00,000/- for Physiotherapist Charges, Rs.50,000/- for Transportation, Rs.1,00,000/- for Extra Nourishment and Rs.2,000/- for

Damage to Clothes. Thus, in all, the Tribunal awarded a sum of Rs.23,04,000/- as compensation to the claimant.

8. We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.K.Myilsamy, learned counsel for the first respondent.

9. Mr.S.Arunkumar, learned counsel appearing for the appellant Insurance Company would vehemently contend that the Tribunal ought not to have let off the claimant for his act of producing fake bills. He would also point out that once the compensation has been awarded for the Loss of Earning Power, awarding of compensation for Permanent Disability would amount to double compensation. Therefore, according to the learned counsel the award of Rs.3,00,000/- towards Disability Percentage has to be set aside. Pleading further, the learned counsel would submit that Physiotherapist Charge of Rs.1,00,000/- is again a duplication as it is included in Rs.4,00,000/- awarded for Medical Expenses. The learned counsel would also point out that Rs.1,00,000/- for Extra Nourishment is highly excessive and the same will have to be reduced.

10. Mr.K.Myilsamy, learned counsel appearing for the first respondent/claimant would submit that the attempt to produce the fake bills was fundamentally because of ill advice and therefore, the claimant, who is a lay person, cannot be penalised for such an attempt. We are in agreement with the contention of the learned counsel for the first respondent on this issue.

11. The production of fake bills in order to jack up the claim is due to professional advice, which many times terms out to be ill advice. Of course, the claimant should have been careful in not succumbing to such illegal methods. We do not think that the claimant should be penalised for such action. Fortunately, the Insurance Company had demonstrated that these bills were bogus and the attempt has been averted.

12. Adverting to quantum of compensation, we find considerable force in the submission of Mr.Arunkumar. learned counsel appearing for the Insurance Company that the award of Rs.3,00,000/- towards Percentage of Disability after awarding Rs.96,000/- towards Loss of Income and Rs.10,56,000/- towards Loss of Earning Power, is actually a duplication,

which resulted in excess compensation. Therefore, the award of **Rs.3,00,000/-** on the ground of Percentage of Disability is set aside. Similarly, the award of Rs.1,00,000/- for Physiotherapy after having awarded Rs.4,00,000/- towards Medical Expenses is also unsustainable, as it would also amount to double compensation. Hence, the award of **Rs.1,00,000/-** under the head Physiotherapist Charges is also set aside.

13. The award of Rs.1,00,000/- for Extra Nourishment also appears to be highly excessive. The award under the heads viz., Extra Nourishment, Transportation, Damage to Clothing etc., should be of a notional figure. As it is difficult to ascertain the exact amount under those heads, at the same time, it should not result in a bonanza. Hence, the amount of Rs.1,00,000/- awarded towards Extra Nourishment is reduced to **Rs.30,000/-**. Thus, the total compensation is reduced to **Rs.18,34,000/-** which shall carry interest at 7.5% from the date of claim petition till the date of payment. Since the driver of the offending vehicle did not possess valid driving license at the time of the accident, the pay and recovery ordered by the Tribunal is sustained.

14. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

Sl. No	*Head under which the compensation is awarded*	*Amount awarded by the Tribunal in Rs.*	*Amount awarded by this Court in Rs.*
1	Loss of Income	96,000	96,000
2	Loss of Earnings	10,56,000	10,56,000
3	Disability Percentage	3,00,000	-
4	Pain and Sufferings	1,00,000	1,00,000
5	Loss of Amenities	1,00,000	1,00,000
6	Medical Bills	4,00,000	4,00,000
7	Physiotherapist Charges	1,00,000	-
8	Transportation	50,000	50,000
9	Extra Nourishment	1,00,000	30,000
10	Damage to Clothes	2,000	2,000
	Total	**23,04,000**	**18,34,000**

15. At this juncture, the learned counsel for the Insurance Company would submit that the Insurance Company has already deposited 50% of the compensation as awarded by the Tribunal.

16. In fine, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the balance amount as per the modified award with accrued interest and costs, within a period of

eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount together with interest and costs. No costs.

(R.S.M.J.,) (S.S.K.J.,)
16.12.2022

Index : Yes / No
Speaking order: Yes/No
pvs

To
1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal, Coimbatore
2. The Section Officer,
VR Section High Court, Madras.

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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