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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.3250 of 2014
and M.P.No.1 of 2014

United India Insurance Company Ltd.,
No.235, Gandhi Road,
Arni 632 302.

... Appellant /2nd Respondent
.vs.

1.M.Babu

...1st Respondent/Petitioner

2.J.Jayanthi
(2nd respondent was set exparte
before the Tribunal)

...2nd Respondent/1st Respondent

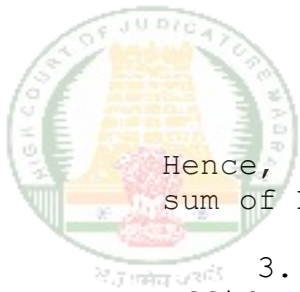
Prayer.: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Award and decree dated 25.06.2014 made in M.C.O.P.No.4701 of 2012 on the file of the Motor Accident Claims Tribunal (V Small Causes Court) Chennai.

For Appellant	:	M/s.A.Dhiraviyanathan
For R1	:	M/s.K.Malaikkannu

J U D G M E N T

The Insurance Company has preferred this Civil Miscellaneous Appeal challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (V Small Causes Court) Chennai in M.C.O.P.No. 4701 of 2012 dated 25.06.2014.

2. The 1st respondent was the claimant before the Tribunal. He met with an accident which took place on 12.05.2012 at about 5.00 a.m. The 1st respondent was walking from East to West direction, near the Old Jail Road, Mint Tower Clock Junction at that time, a lorry bearing Reg.No.TN-25-S-9990 came from behind in a rash and negligent manner and hit against the petitioner. As a result of which, the claimant fell down and the wheel of the lorry, ran over the right foot of the first respondent.



Hence, the appellant and the 2nd respondent are liable to pay a sum of Rs.6,00,000/- as compensation.

3. The appellant - Insurance Company has filed a counter affidavit in which it was stated that appellant Insurance Company denied the manner in which the accident had occurred. They denied the age, occupation, income, place and date of accident, cause of injuries. He would further state that the second respondent has not produced any records and also the driving licence for their verification and hence, the appellant - Insurance Company is not liable to pay compensation.

4. However, the Tribunal after analysing the materials available on record, found that the driver of the lorry was negligent and fastened liability on the appellant - Insurance Company. The Tribunal totally awarded Rs.4,37,000/- as compensation under the following heads:

Heads		Amount awarded by the Tribunal
1	Loss of Income for 6 months (6500x6)	Rs. 39,000/-
2	Transportation	Rs. 5,000/-
3	Extra Nourishment	Rs. 40,000/-
4	Damage to clothes and articles	Rs. 1,500/-
5	Medical Expenses	Rs. 2,000/-
6	Pain and suffering	Rs. 40,000/-
7	Disability	Rs. 70,000/-
8	Loss of amenities	Rs. 25,000/-
9	Loss of Earning capacity (Rs.6500x12x11x25%)	Rs. 2,14,500/-
Total		Rs. 4,37,000/-

5. Aggrieved by the impugned order, the Appellant-Insurance Company has filed the present appeal.

6. The learned counsel for the appellant - Insurance Company submitted that P.W.2-doctor has not treated the claimant and also admits that the assessment of disability may vary from doctor to doctor by 5%. P.W.2 also has not filed x-ray report in support of his assessment. Hence the disability assessed by P.W.2 seems to be on the higher side. However, considering the fracture of phalnx, the disability of the first respondent is



assessed as 35%. When assessment of the disability appears on the higher side, consequently the Tribunal ought to have awarded reasonable compensation under the heads of earning capacity. He has further submitted that the Tribunal erred in awarding the aforesaid compensation to pay to the 1st respondent. Hence he prayed for setting aside the impugned order of the Tribunal.

7. The learned counsel for the 1st respondent-claimant submitted that the Tribunal has awarded just compensation to the first respondent-claimant. He submits that the Impugned Judgment and decree is well reasoned and requires no interference. Therefore he prayed for dismissal of this appeal.

8. I have gone through the impugned order passed by the Tribunal and also perused the material evidence available on record.

9. It is seen from the award of the Tribunal that the 1st respondent sustained Grade III B fracture of 1st, 2nd, 3rd, 4th and 5th proximal phalanx right and fracture of 2nd meta tarsal right foot and was treated as inpatient from 12.05.2012 to 16.05.2012 thereby would debridement and K wire fixation was done. Further he was treated as inpatient from 23.05.2012 to 06.06.2012 in the same hospital and underwent surgery on 24.05.2012 thereby toe disarticulation of 2nd and 3rd toes right foot was done and discharged on 06.06.2012. Thereafter he continued treatment as outpatient till 20.09.2012 on various dates. Hence, the appellant is liable to pay the compensation. Based on the oral and documentary evidence, it is proved that due to the accident, the claimant is unable to do his routine work as he did before.

10. Considering the nature of injuries suffered by the 1st respondent-claimant which is grievous in nature, the Tribunal has awarded a just compensation. Therefore, I do not find any reasons to interfere with the impugned Judgment and decree passed by the Tribunal.

11. It is noticed that by an order dated 20.11.2014, this Court directed the appellant Insurance Company to deposit the entire amount of compensation awarded by the Tribunal together with accrued interest and costs to the credit of M.C.O.P.No.4701 of 2012 vide M.P.No.1 of 2014 in this Civil Miscellaneous Appeal. On such deposit being made, the claimant/1st respondent was permitted to withdraw 25% of the deposited amount, without furnishing security.

12. It is represented by the learned counsel for the first respondent/claimant that the entire amount has already been deposited before the Tribunal. He further submitted that 25%



of the deposited amount has already been withdrawn by the 1st respondent/claimant

13. The 1st respondent/claimant is permitted to withdraw the balance amount with interest and cost by filing necessary application before the Tribunal.

14. Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kkd

To

The Motor Accident Claims Tribunal
(V Small Causes Court) Chennai.

+1cc to Mr.K.Malaikkannu, Advocate, S.R.No.18074

C.M.A.No.3250 of 2014
and M.P.No.1 of 2014

AJB(CO)
CT 14/06/2022