(2014) 07 MAD CK 0015

In the Madras High Court

Case No : C.M.A.Nos.624 and 2051 of 2012 and M.P.No.1 of 2012 in C.M.A.No.624 of 2012 C.M.A.No.624 of 2012

United India Insurance Company Ltd. APPELLANT

Vs

K.Nagaraj RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 439

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr.D.Bhaskaran, Advocate, for the Applicant in C.M.A.No.624 of 2012; Mr.A.Shanmugaraj, Advocate, for the Applicant in C.M.A.No.2051 of 2012; Mr.A.Shanmugaraj, Advocate, for the Respondent No. 1 in C.M.A.No.624 of 2012; Mr.D.Baskaran, Advocate, for the Respondent No. 2 in C.M.A.No.2051 of 2012

Final Decision : Disposed Off

Judgement

Mr. R.Subbiah, J.—Both the above appeals arise out of the same award dated 24.11.2011 in M.C.O.P.No.100 of 2003 passed by the Motor Accidents Claims Tribunal (III Judge, Small Causes Court), Chennai. Hence, they are disposed of by way of this common judgment.

2.C.M.A.No.624 of 2012 has been filed by the Insurance Company contending that the compensation amount awarded by the Tribunal under different heads is extremely on the higher side and hence, the same needs proper reduction. C.M.A.No.2051 of 2012 has been filed by the claimant contending that the Tribunal has not awarded adequate compensation and hence, the compensation amount needs proper enhancement.

3.Since both the appeals have been filed challenging the quantum of compensation only, I am not dealing with the other aspects of the award passed by the Tribunal.

4.So far as the quantum of compensation is concerned, it is the case of the claimant that on account of the accident involving the vehicle insured with the Insurance Company herein, he had sustained fracture on his right leg and multiple injuries all over the body. In order to prove the disability suffered by the claimant, on the side of the claimant, the claimant has examined himself as P.W.1, besides examining one Dr.N.Saichandran as P.W.2. The Doctor-P.W.2 has stated in his evidence that the claimant has sustained "comminuted supra condyler fracture right femur" and he as assessed the disability suffered by the claimant at 65%. Based on the evidence of P.W.2, the Tribunal has passed an awarded for a sum of Rs.3 lakhs. The break up details of the award amount passed by the Tribunal are as follows:-

Loss of Income for 6 months

Rs. 20,000/-

Transportation

Rs. 10,000/-

Extra-nourishment

Rs. 10,000/-

Medical expenses

Rs. 10,000/-

Pain and suffering

Rs. 10,000/-

Mental agony to the claimant

Rs. 10,000/-

Disability of 65% at the rate of Rs.2000/- per disability

Rs.1,30,000/-

Loss of earning power

Rs.1,00,000/-

Total

Rs.3,00,000/-

5. Now, it is the submission of the learned counsel for the Insurance company that the Tribunal, after having awarded a sum of Rs.1,30,000/- for 65% disability suffered by the claimant, ought not to have awarded another sum of Rs.1,00,000/- for loss of earning power. Further, the Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of earning power, based on the evidence of P.W.2-Doctor. But, P.W.2-Doctor in his evidence has admitted that he did not give treatment to the injured/claimant. The learned counsel for the Insurance

Company, by inviting the attention of this Court to the Discharge Summary marked on the side of the claimant as Ex.P.4, has also submitted that in the Discharge Summary-Ex.P.4, it has been categorically mentioned as "A known case of Anterior Potromyties". Therefore, even before the accident, the petitioner is having ailment. The injuries sustained by the claimant in the accident has no way contributed any loss to the earning power of the claimant. Thus, the learned counsel for the Insurance Company submitted that the award amount of Rs.1,00,000/- for loss of earning power awarded by the Tribunal has to be set aside.

6. Per contra, the learned counsel for the claimant submitted that on account of the accident, the claimant has sustained fracture injury on his right leg and during the course of surgery, a plate was implanted and that Doctor-P.W.2 has clearly stated in his evidence that the claimant cannot squat on the floor and he cannot claim stairs. Therefore, considering the grievous nature of the injuries, the Tribunal ought to have applied multiplier method for calculating the compensation amount for loss of income. Further, the Tribunal has not taken the future prospect of the claimant while calculating the award amount under the head of disability. Thus, the learned counsel for the claimant submitted that the compensation amount has to be enhanced.

7. Keeping the submission made on either side, I have carefully perused the materials available on record and I find that the victim/claimant had sustained ''''comminuted supra condyler fracture right femur'''' and the Doctor-P.W.2 has assessed the disability suffered by the victim/claimant at 65%. At the time of accident, the claimant was working as Messenger in a firm namely Associate Engineers. The victim/claimant took treatment in Government Royapettah Hospital as inpatient from 01.07.2001 to 26.07.2001, for a period of 25 days. Again he took treatment as inpatient in the same Hospital from 08.01.2002 to 12.01.2002 ie., for a period of 5 days. The Doctor-P.W.2 has stated in his evidence that on account of the injuries sustained by the victim/claimant, he cannot do his normal works as he was doing before the accident. Under such circumstances, I do not find any infirmity in awarding a sum of Rs.1,00,000/- by the Tribunal under the head of loss of earning power.

8. It is the submission of the learned counsel for the Insurance Company that even before the accident, the claimant was suffering from Anterior Potromyties ailment and the injuries sustained by him in the accident cannot be said to have caused any loss in the earning power. In this regard, the learned counsel for the Insurance Company has also made a reference to the Discharge Summary marked on the side of the claimant as Ex.P.4, wherein it has been stated as "A known case of Anterior Potromyties". But, during the Trial, no detailed cross-examination was done on the side of the Insurance Company in this regard. Under such circumstance, I am not inclined to accept the submission made by the learned counsel for the Insurance Company that by considering the Discharge Summary-Ex.P.4, the Tribunal ought not to have awarded a sum of

Rs.1,00,000/- for loss of earning power.

9. Further, though the claimant has filed the appeal for enhancement of the compensation amount, I do not find sufficient evidence in this case to show that because of the accident, the claimant was completely prevented from doing his work. Under such circumstances, I am not inclined to enhance the compensation amount also. Under such circumstance, I do not find any merit in both the appeals and the same are liable to be dismissed.

10. In the result, both the above Civil Miscellaneous Appeals are dismissed. The Insurance Company is directed to deposit the entire award amount, if not deposited so far, with interest and costs, as awarded by the Tribunal, to the credit of the above said MCOP, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to with the entire amount, by making necessary application before the Tribunal.

11. Consequently, connected Miscellaneous Petition is closed. No costs.