



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.08.2020	Pronounced on: 07.08.2020
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Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.1611 of 2016

P.Siva Kumar,
S/o.C.Parasuramaan,
No.18/40, Habibullah II Lane,
Triplicane, Chennai - 600 005... Petitioner/Appellant

/versus/

1. M.Suresh,
S/o.Munusamy,
No.2, Kooram Road,
Ozhakolpet, Kanchipuram District,
Kanchipuram - 631 502.
Tamil Nadu.
2. Tata AIG Insurance Co Ltd.,
No.1, Ethiraj Salai,
Egmore,
Chennai - 600 008. ... Respondents/1st and 2nd Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 28.07.2015 and made in M.C.O.P.No.4637 of 2012 on the file of the Motor Accidents Claims Tribunal, II Judge I/c / III Judge, (In the II Court of Small Causes, Chennai).

For Appellant : Mr.S.Vadivel
For R2 : Ms.Harini,
for Mr.N.Vijayaraghavan,

For R1 : No appearance

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(The case has been heard through video conference)

The Accident victim is not satisfied with the quantum of compensation given by the Tribunal for the injuries he sustained in the motor road accident, has filed this appeal seeking enhancement.

2. On 20.10.2011 at about 19.30 hrs, the appellant, while returning home in his Splender Plus Motor cycle bearing Registration No.TN 73 Y 4276 near Periya Kanchipuram market, opposite to Sankara Mutt, G.K.Mandapam, Kanchipuram, a Tata Indica car bearing Registration No.TN 21-AE-8201 dashed against the appellant motor cycle. In the said accident, the appellant suffered head injury, right clavicle bone fracture and injuries all over his body. He was first taken to Government Head Quarters Hospital, Kanchipuram. After first aid, he was taken to Sri Ramachandra Hospital, Porur for better treatment. He was admitted as inpatient and treated from 21.10.2011 to 01.11.2011 for his injuries.

3. The appellant is a B.A graduate also hold a Provisional National Apprenticeship Certificate and Technical Teachers Certificate Course. He was employed as salesman (contract labourer - alternate days) in TASMACHOP shop No.4381 at Musaravakkam on consolidated pay of Rs.3,400/- per month and employed as part time two wheeler mechanic for a daily wage of Rs.300/- on alternate days.

4. A sum of Rs.8,00,000/- sought as compensation in the claim petition for the loss of earning, medical expenses, transport, mental agony, permanent disability, loss of earning power and loss of amenities.

5. The 2nd respondent/Insurance company repudiated the claim by attributing negligence on the appellant. The compensation claimed was termed as exorbitant, excessive and without any reasonable justification. The age, qualification and the monthly income were denied.

6. Before the Tribunal, the 2 witnesses and 16 Exhibits were relied by the appellant.

7. The Tribunal on considering the evidence placed before it, awarded Rs.1,53,000/- as per the break up given below:-

Loss of income	Rs.15,000/-
Transport to Hospital	Rs.5,000/-
Extra nourishment	Rs.5,000/-
Damage to clothing	Rs.500/-
Medical expenses	Rs.2,385/-
Pain and suffering	Rs.35,000/-
Disability 45% x Rs.2000	Rs.90,000/-

Total	Rs.1,52,885/-
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* Rounded off to Rs 1,53,000/-

8. The adequacy of the compensation for the loss on injury sustained is questioned in this Appeal.

9. The perusal of the impugned award, this Court finds that the Tribunal has rejected the consolidated medical bill for Rs.1,26,116/- which is marked as Ex.P.5 on the ground that the claimant/appellant has not produced the receipts for the payment and no document to show whether the expenses are incurred by the claimant. The Tribunal has observed that there is no reason for not producing payment receipts for such a heavy sum and had presumed that, the petitioner being employed in TASMAC, there is every possibility of getting the sum reimbursement either through the Government Insurance or otherwise.

10. The said presumption for denying the reimbursement of the medical expenses appears to be improper. Unless, the respondent is able to positively establish that the expenses never occurred or the expense were not met by the claimant, denial of reimbursement on surmises and presumption is not just and proper. The consolidated statement of bills given by a reputed Hospital need not be suspected. Further more, for fractured injuries on the head and middle 3rd clavicle, the appellant was inpatient in the private Hospital for 11 days.

Surgery has been done for the fractures. The Tribunal rejecting the consolidated bill and had awarded only Rs.2,385/- towards medical expenses. Therefore, this Court holds that the appellant is entitled for the total reimbursement of Rs.1,39,866/- as per Ex.P.5 and Ex.P.6 under the head medical expenses.

11. The Appellant has proved through Ex.P.16 his employment in TASMAC. He possess apprentice certificate from Tamil Nadu State Transport Corporation (Ex.P.12), Provisional National Trade Certificate from Employment and Training, Chepauk (Ex.P.13) and Technical Examination Higher Grade Drawing Certificate (Ex.P.14). He has stated in the claim petition his monthly earning was Rs.7,900/-. Though no proof for the same, due to the accident atleast for six months, he would have lost whatever he was earning before the accident. Therefore, his loss of income is assessed as Rs.36,000/- (@ of Rs.6,000/- for 6 months)

12. The Tribunal has fixed 25% disability for the head injury and 20% disability for the clavicle fracture. For total 45% partial permanent disability Rs.90,000/- has been awarded at the rate of Rs.2,000/- per % disability. This Court is not

inclined to disturb this part of compensation. However, this Court is of the view that, though the physical disability may be 45%, the collar bone fracture for a Technically qualified person like the appellant, would cause more functional disability. The impairment of amenities due to collar bone fracture and the likelihood of expense for the attender not been taken note by the Tribunal for fixation of compensation. Therefore, considering the age and the nature of the fracture, a sum of Rs.30,000/- is awarded for loss of amenities and a sum of Rs.15,000/- is awarded for attender's charge. For transport and extra nourishment additional sum of Rs.5,000/- on each head is awarded. Thus after the enhancement the compensation payable shall be as under:-

Loss of income	Rs. 36,000/-
Transport to Hospital	Rs.10,000/-
Extra nourishment	Rs.10,000/-
Damage to clothing	Rs.500/-
Medical expenses	Rs.1,39,866/-
Pain and suffering	Rs.35,000/-
Disability 45% x Rs.2000	Rs.90,000/-
Loss of amenities	Rs .30,000/-
Attender's charge	Rs.15,000/-
Total	Rs 3,66,366/-

13. As a result, the award of Rs.1,53,000/- is enhanced to Rs.3,66,366/-. The appellant shall be entitled for interest at the rate of 7.5% for the award amount from the date of numbering the claim petition (15/10/2012) till the date of deposit. If any amount already deposited, same shall be defrayed. Time for deposit 8 weeks from today. On such deposit, the appellant is permitted to withdraw the money on proper application.

14. Accordingly, Civil Miscellaneous Appeal is Partly allowed. With costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
II Judge I/c / III Judge,II Court of Small Causes, Chennai.

+1cc to Mr.S.Vadivel , Advocate SR.No. 26433

C.M.A.No.1611 of 2016

A.SK(13/10/2020)