

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1892 of 2016
and
C.M.P.No.13879 of 2016

The National Insurance Company Limited,
Branch Office, 1st Floor,
Karthikeya Complex,
403/B.10, Mettur Main road,
Bhavani. ... Appellant/3rd Respondent

//versus//

1.Sekar ...1st Respondent/Petitioner

2.Sundaramoorthy

3.Komaraswamy ...Respondents2 &3/Respondents1&2

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act 1988, praying to set aside the decree and judgment passed in M.A.C.T.O.P.No.82 of 2011, dated 30.03.2013 on the file of the Motor Vehicle Accident Claims Tribunal, Subordinate Court, Perundurai.

For Appellant : Mrs.N.B.Surekha

For R1 : Mr.C.Ramaraj

For R2 & R3 : No appearance

JUDGMENT

(The case has been heard through Video Conference)

This Civil Miscellaneous Appeal is filed by the Insurance Company, being aggrieved by the computation of compensation awarded to the claimant for the injury sustained by him in the road accident occurred on 20.09.2009.

2.The case of the claimant is that at the fateful day while he was riding his motorcycle bearing Reg.No. TN 47 9461 along Perundurai to Kunnathur main road, a car bearing Reg.No.TN 36 E

7895 came from the same direction rash and negligently and hit him from behind. He fell down on the road and sustained grievous head injury and also sustained bone fracture. Seeking compensation of Rs.20,00,000/- he filed a claim petition. The Tribunal, after considering the evidence placed before it has awarded a sum of Rs. 6,64,000/- as compensation.

3.The short point raised by the learned counsel appearing for the appellant/Insurance Company in this appeal is that no doubt, the claimant sustained injury in the accident occurred on 20.09.2009 and got treatment in Kovai Medical Center and Hospital Limited, Coimbatore. However, he was discharged on 31.10.2009 at 2.25 a.m. after being recovered from the injury. Thereafter, he sustained domestic injury on 02.11.2009 and got admitted in the hospital again and he was discharged on 06.11.2009. The second time admission in the hospital was not in connection with the accident injury for which the Tribunal has awarded a sum of Rs.27,590/- based on Ex.P12.

4.The learned counsel appearing for the appellant would submit that the claimant is not entitled for reimbursement of medical bills (Ex.P12) since it is no way connected with the motor accident occurred on 20.09.2009.

5.On perusing the discharge summary marked Ex.P9 and Ex.P10, this Court finds that for the motor accident injury the claimant was admitted in Kovai Medical Center and Hospital Limited, Avinashi Road, Coimbatore. He was treated as inpatient from 20.09.2009 and got discharged from the hospital on 31.10.2009 at 2.25 a.m. In the discharge summary Ex.P9, the Consultant Neuro Surgeon of the said hospital has given treatment note about the injury which reads as below:-

"Patient initially admitted in ICU ward and intubated into ventilator. Patient underwent right temporo parietal craniotomy and evacuation of contused brain with ICH done on 21.09.09, under general anaesthesia. Would debridement and repair for (L) forehead and frontal area of scalp, would debridement +repair of dorsal nasal defect by flap, (R)side of upper lip injury repair done on 21.09.09. Post operatively patient treated in ICU ward. Surgical tracheostomy done on 24.09.09. Patient extubated from ventilator on 29.9.09 and shifted to Neuro-ICU on 30.9.09. Physiotherapy and occupational therapy also given. Tracheostomy closed on 24.10.09. At discharge patient afebrile, moving all limbs. No bed sores, restless."

Thereafter, it appears that the claimant has sustained injury due to fall of slab over head and got admitted in the very same hospital on 02.11.2009 at 1.25 p.m.

6.The discharge summary in this regard is marked as Ex.P10. The gist of this discharge summary reads as below:

Date of Admission :02.11.2009

Date of discharge :06.11.2009

Admitted with history of fall of slab over head.

For the said subsequent injury, he has spend a sum of Rs.27,590/- under Ex.P12. While computing the award, the Tribunal has awarded a total sum of Rs.3,62,304/- towards medical expenses which includes Rs.27,590/- which is not pertaining to the injury sustained during the road accident. Hence, to that extent the award of the Tribunal is modified.

7. The break up details of the modified award passed by this Court is as below:-

Sl. No.	Particulars	Award amount of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed /modified /reduced
1.	Disability	2,61,120-00	2,61,120-00	Confirmed
2.	Medical expenses	3,62,304-00	3,34,714-00	Reduced
3.	Loss of pain and suffering	20,000-00	20,000-00	Confirmed
4.	Extra nourishment	10,000-00	10,000-00	Confirmed
5.	Transport charges	5,000-00	5,000-00	Confirmed
6.	Attender charges	6,000-00	6,000-00	Confirmed
	Total	6,64,424-00 rounded off Rs.6,64,000-00	6,36,834-00 rounded off 6,36,800-00	Reduced

Except the above modification i.e under the head of medical expenses, the award under other heads are confirmed. The award amount of the Tribunal is reduced from Rs.6,64,000/- to Rs.6,36,800/-.

8. With the above modification, this Civil Miscellaneous Appeal is partly allowed. The award amount of the Tribunal is reduced from Rs.6,64,000 to Rs.6,36,800/- with interest at the rate of 7.5% p.a. from the date of petition, till the date of realization. No costs. Consequently, connected Miscellaneous Petition is closed.

9. The learned counsel appearing for the appellant would submit that the Insurance Company has already deposited the entire award amount in the tribunal. If it is so, the difference amount between the award of the tribunal and the modified award passed by this Court shall be permitted to withdraw by the Insurance Company. The claimant is also permitted to withdraw the modified award amount on proper application, less the amount already withdrawn by him.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ari

To:

Motor Vehicle Accident Claims Tribunal,
Subordinate Judge,
Perundurai.

Copy To: The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 31604
+1 cc to M/s.M.Guruprasad, Advocate Sr.No. 31534

C.M.A.No.1892 of 2016
and
C.M.P.No.13879 of 2016

MP(CO)
RMP(17/05/2021)

सत्यमेव जयते

WEB COPY