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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3595 of 2014

and

M.P.No.1 of 2014

V.Aravind Babu

.. Appellant/2nd Respondent

Vs.

1.V.K.Abilash

2.A.Arjun

.. Respondents/Petitioner & 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2013 made in M.C.O.P.No.2875 of 2010 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan

For R1 : Ms.D.Geetha

For R2 : No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the owner of the vehicle challenging the portion of the award fixing 75% of the contributory negligence on the part of him dated 07.11.2013 made in M.C.O.P.No.2875 of 2010 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.



2.The appellant is the 2nd respondent in M.C.O.P.No.2875 of 2010 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.04.2010.

3.According to the 1st respondent, on the date of accident i.e., on 10.04.2010 at about 10.30 p.m., while he was riding in his motorcycle bearing Registration No.TN-07-AJ-4964 from Tea shop on L.B.Road, Sastri Nagar 1st Cross Road from West to East direction, the 2nd respondent, the driver of the car bearing Registration No.TN-05-M-8989 belonging to the appellant drove the same in a rash and negligent manner, dashed against the motorcycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries all over the body and hence, he filed the above said claim petition claiming compensation against the appellant and the 2nd respondent.

4.The 2nd respondent, driver of the car filed counter statement, which was adopted by the appellant, owner of the car, denying the averments made in the claim petition and stated that the accident has occurred only due to rash and negligent riding of the motorcycle by the 1st respondent. When the 2nd respondent, the driver of the car drove the same on the left hand side of Sasthri Nagar I Main Road from East to West direction, the driver of the Ford Icon car bearing Registration No.TN-07-AP-4632, which was coming in the opposite direction, crossed the road suddenly, hit the car driven by the 2nd respondent. At that time, the 1st respondent, who was riding the motorcycle under the influence of alcohol and was talking in cell phone, tried to overtake the Ford Icon car and came to the right hand side of the Road, dashed against the car belonging to the appellant and thus, the accident has occurred. After the accident, the appellant and the 2nd respondent admitted the 1st respondent in the hospital and paid a sum of Rs.50,000/- towards medical expenses. The 1st respondent has lodged a false complaint implicating the 2nd respondent. The appellant and the 2nd respondent have also denied the age, income and nature of injuries suffered by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Ekambaram was examined as P.W.2 and Dr.N.Saichandran was examined as P.W.3 and 14 documents were marked as Exs.P1 to P14. The appellant examined the 2nd respondent, the driver of the car as R.W.1 and marked four



documents as Exs.R1 to R4.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligent driving by both the 1st respondent, rider of the motorcycle as well as the 2nd respondent, driver of the car belonging to the appellant, fixed 25 : 75 contributory negligence on the part of the 1st respondent as well as the 2nd respondent respectively, awarded a sum of Rs.5,71,550/- as compensation and directed the appellant, owner of the car and the 2nd respondent, driver of the car to pay a sum of Rs.4,28,700/- being 75% of the award amount as compensation to the 1st respondent.

7.Challenging the portion of the award fixing 75% of the contributory negligence on the part of the appellant, the appellant, owner of the car has come out with the present appeal.

8.Though the appellant has raised grounds with regard to negligence, liability and total compensation granted to the 1st respondent, at the time of arguments, the learned counsel appearing for the appellant restricted his argument only with regard to compensation granted towards medical expenses as per Ex.P12.

9.The learned counsel appearing for the appellant contended that 1st respondent has not produced original bills. He has claimed medical bills from some other Insurance Company by producing original. In the cross-examination, the 1st respondent as P.W.1 has admitted that Ex.P7/Discharge summary and Ex.P12/medical bills are only xerox copies. Hence, he is not entitled to claim compensation for medical expenses by producing xerox copies of the medical bills. The Tribunal having found that Ex.P12/medical bills are not originals, erroneously awarded Rs.4,10,534/- after deducting Rs.50,000/- paid by the appellant towards medical expenses and directing the appellant to pay the said sum and prayed for setting aside the amount granted towards medical bills.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the appellant has not proved that the 1st respondent already claimed the said bills and availed compensation for the medical expenses. In the absence of any proof by the appellant, the Tribunal granted compensation towards medical expenses after deducting Rs.50,000/- paid by the appellant. In the absence of any evidence, the secondary evidence is admissible. The appellant cannot make any passing remarks by which, it cannot be dis-entitled the claim of the 1st respondent. The 1st respondent examined P.W.2/Medical Officer from the hospital, where the 1st respondent has taken treatment



and proved that Ex.P12/Medical bills are only originals. No suggestion was put forth to the witnesses examined by the 1st respondent as P.W.1 and P.W.2 and prayed for dismissal of the appeal.

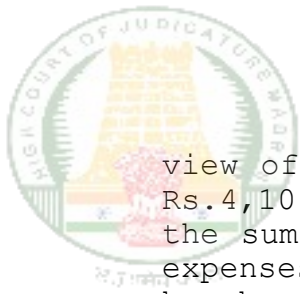
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11. Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for the 2nd respondent either in person or through counsel.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13. From the materials on record, it is seen that apart from other amounts, the 1st respondent has claimed a sum of Rs.4,60,534/- towards medical expenses. The 1st respondent has produced Ex.P12/medical bills. It is the case of the appellant that the 1st respondent has submitted the original bills for getting reimbursement of the said amount and availed the same. In reply, the counsel for the 1st respondent argued before the Tribunal that both the bills submitted are originals. The counsel for the 1st respondent before the Tribunal has not argued that 1st respondent did not produce original bills for reimbursement. The Tribunal verifying Ex.P12 held that the bills produced by the 1st respondent are not originals. The Tribunal having found that Ex.P12/medical bills are not originals, erroneously held that the appellant has not produced any evidence to show that the 1st respondent has already claimed medical expenses from some other Insurance Company or from the employer, accepted Ex.P12 and granted a sum of Rs.4,10,534/- towards medical expenses after deducting Rs.50,000/- paid by the appellant. The reason given by the Tribunal for accepting Ex.P12 is erroneous. The contention of the learned counsel appearing for the 1st respondent is that the appellant has not put forth any suggestion to the witnesses examined by the 1st respondent and therefore, the appellant cannot make any passing remarks. The said contention is contrary to the records.

14. From the evidence of P.W.1 and P.W.2, it is clear that P.W.1 in his cross-examination has admitted that Ex.P7/Discharge summary and Ex.P12/Medical bills are only xerox copies. When the appeal is taken up for hearing, the learned counsel appearing for the 1st respondent contended that Ex.P12/medical bills produced by the 1st respondent are originals and therefore, the 1st respondent is entitled to a sum of Rs.4,60,534/- as per Ex.P12. This Court verified Ex.P12/medical bills produced by the 1st respondent. On verification, it is seen that in Ex.P12, all the bills are not originals, except the bills for Rs.1,297.84 paid by the 1st respondent to Al Shifa Hospital, Malappuram. In



view of the same, the 1st respondent is not entitled to a sum of Rs.4,10,534/- granted by the Tribunal. For the above reason, the sum of Rs.4,10,534/- granted by the Tribunal towards medical expenses as per Ex.P12 is liable to be set aside and it is hereby set aside. The amounts awarded by the Tribunal under all other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	15,000	15,000	Confirmed
2.	Transportation	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	4,10,534	-	Set aside
6.	Attendant charges	5,000	5,000	Confirmed
7.	Pain and suffering	50,000	50,000	Confirmed
8.	Disability	80,000	80,000	Confirmed
	Total	5,71,534 rounded off to 5,71,550	1,61,000	Reduced by Rs.3,07,950 /-
	75% of the award amount	4,28,662.50 rounded off to 4,28,700	1,20,750	

15. In the result, the Civil Miscellaneous Appeal is allowed. The compensation of Rs.5,71,550/- awarded by the Tribunal is hereby reduced to Rs.1,61,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant and the 2nd respondent are directed to deposit a sum of Rs.1,20,750/- being 75% of the award amount now determined by this Court along with interest and costs, less the



amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The appellant and the 2nd respondent are permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2875 of 2010 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj

To

The V Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.42956

C.M.A.No.3595 of 2014
and M.P.No.1 of 2014

PA(CO)
RLP(03/09/2021)