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In the High Court of Judicature at Madras

Dated: 17.02.2021

Coram

The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A.No.2711 of 2014

R.Krishnamurthi

... Appellant/Claimants

..Vs..

1.M/s.Southern Roadways Ltd.,
Lakshmi Buildings,
Usilampatti Road,
Madurai-625 016.

2.United India Insurance Company
No.134, Greams Road, IV Floor,
Chennai-600 006.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree passed by the learned Special Sub Judge-II, Chennai in M.A.C.T.O.P.No.1951 of 2012 dated 31.01.2014.

For Appellant	:	Ms.A.Subadra for M/s. M.Malar
For Respondent-2	:	Mr.C.Paranthaman

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal/learned Special Sub Judge-II, (MACT), Chennai in M.A.C.T.O.P.No.1951 of 2012 dated 31.01.2014, the appellant/claimant has preferred this appeal.

2. Heard Ms.A.Subadra, learned counsel for the appellant and Mr.C.Paranthaman, learned counsel for the second respondent/Insurance Company.

3.The brief facts of the case are as follows:-

a) On 14.07.2011 at about 1.00 p.m., when the claimant appellant was proceeding towards Mayiladudurai in his Maruti Van bearing registration No.TN-04-E-1288 near Aathukudi bridge, a lorry bearing registration No.TDG 3397 which came in the opposite direction driven by its driver in a rash and negligent manner, dashed the appellant vehicle, as a result of which, he



had sustained grievous injuries. In view of the same, he had filed a claim petition before the Tribunal claiming a sum of Rs.6 lakhs as compensation.

b) Before the Tribunal, the witnesses P.W.1 & P.W.2 were examined and P1 to P17 were marked as exhibits on the side of the claimant/appellant and witness RW1 was examined and no documents were marked on the side of the respondents. The Tribunal after analysing the oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle, which was insured with the second respondent Insurance Company and directed the second respondent/Insurance Company therein to deposit a sum of Rs.50,000/- with interest at the rate of 7.5% p.a. as just and reasonable compensation to the claimant/appellant for the injuries sustained by him in the said accident.

4. Aggrieved over the same, the appellant/claimant has preferred the present appeal for enhancement of compensation.

5. The learned counsel for the appellant/claimant submitted that the Tribunal without considering the nature of injuries and the treatment taken by the appellant at different hospitals for which documents Ex.P3 to P15 have been marked before it. She submitted that P.W2/doctor had assessed the disability at 25% as permanent disability as he had post traumatic cervical pain, post traumatic head ache and facial disfigurement. She further submitted that the Tribunal had erred in awarding a sum of Rs.50,000/- as an overall compensation without awarding under various heads. The learned counsel submitted that The Tribunal had not considered the occupation of the appellant as driver and was earning a sum of Rs.10,000/- per month. She also relied upon Section 142 of the Motor Vehicles Act, 1988 in respect of permanent disablement for awarding under the said head due to facial disfigurement suffered by the appellant in the accident. In all, she pleaded that the compensation awarded by the Tribunal is less and warrants interference by this Court to enhance the compensation.

6. On the other hand, the learned counsel for the Insurance Company/second respondent herein submitted that the Tribunal after taking into consideration of the oral and documentary evidences, has rightly awarded the compensation to the appellant and therefore, the award passed by the Tribunal warrants no interference.

7. Heard the submissions made by the learned counsel on either side and also perused the materials available on record.



8. Before the Tribunal, P.W.2/Dr.Saravanabavanandham had deposed that the appellant/claimant had suffered 10% disability for the post traumatic cervical pain, 10% for the post traumatic head ache and another 5% for facial disfigurement. However, on considering the evidences, the Tribunal had come to the conclusion that there was no permanent disability caused to the appellant due to the accident and awarded an overall sum of Rs.50,000/- as compensation. According to the claimant/appellant, the Tribunal has wrongly come to such conclusion that the appellant had suffered only minor injuries without properly considering the medical records as well as the evidence of P.W.2. On contrary, the learned counsel for the second respondent/Insurance Company submitted that the appellant/claimant has marked the documents and was examined as P.W.1 before the Tribunal. Based on the evidence of P.W.2, the Tribunal came to the conclusion that there was no grievous injuries on the neck or head of the appellant but during the cross examination, P.W.2 had deposed that the appellant had suffered 5% disability due to disfigurement on his face of the appellant, hence a sum of Rs.50,000/- has been awarded by the Tribunal and therefore, there is no illegality or perversity in the award passed by the Tribunal.

9. Perusal of the medical records reveals that the appellant/claimant was admitted originally in the Government Hospital at Mayiladuthurai and thereafter, had taken treatment at Government Hospitals, Chennai. However, no documents have been produced to show that the appellant/claimant had taken treatment as in-patient or out-patient continuously. P.W.2/Dr.Saravanabavanandham had deposed in his chief examination that the appellant/claimant had suffered 10% disability for the post traumatic cervical pain, 10% for the post traumatic head ache and another 5% for facial disfigurement whereas during the cross examination, he had stated that there was only sprain on the neck area and had assessed the disability at 5% due to disfigurement on the face. This Court is of the view that as per Section 142 of the Motor Vehicles Act, 1988, the appellant/claimant had suffered 5% disability due to the disfigurement on the face and insofar as other injuries are concerned, there is no partial or permanent disability as rightly decided by the Tribunal. Therefore, this Court opines that the appellant is entitled for compensation under the head of disfigurement at 5% disability and thereby, grants Rs.3,000/- per percentage, which comes to Rs.15,000/- for 5% disfigurement on the face. In regard to the other injuries are concerned, a sum of Rs.20,000/- is granted towards disability due to other injuries as the appellant had suffered post traumatic cervical pain and post traumatic head ache. The learned counsel submitted that the appellant was a driver and was earning a sum of Rs.10,000/- per month during the time of accident. Due to



the said accident, he had taken treatment for nearly two months and therefore pleaded that a reasonable amount has to be granted towards loss of income during the treatment period. Accepting the same, this Court grants a sum of Rs.13,000/- for two months treatment period by fixing his income as Rs.6,500/- per month. This Court is of the view that the appellant is entitled for some reasonable compensation under the other heads. Accordingly, this Court grants a sum of Rs.5000/- towards pain and sufferings, Rs.2,000/- for loss of amenities, Rs.3,000/- for transportation and Rs.5,000/- for extra nourishment. In fine, the award passed by the Tribunal is modified to Rs.63,000/- from Rs.50,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The break-up details of the award amount passed by this Court is as follows:-

Serial No.	Heads	Amount (Rs.)
1	Disfigurement (5%)	15,000 (Rs.3000 x 5)
	Disability due to other injuries	20,000
2	Loss of income during the treatment period for 2 months (Rs.6500 x 2)	13,000
3	Pain & sufferings	5,000
4	loss of amenities	2,000
5	Transportation	3,000
6	Extra nourishment	5,000
	Total	63,000

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part. The Insurance Company/second respondent herein is directed to deposit the entire/balance amount with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation to the credit of M.C.A.T.O.P.No.1951 of 2012, Special Sub Court-II, MACT, Chennai, within a period of 6 weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the compensation amount, less the amount already withdraw if any, on filing appropriate petition before the Tribunal. There shall be no orders as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

DP



1. The Special Sub Judge,
(The Motor Accident Claims Tribunal),
Chennai.

+1cc to Mr.M.Malar, Advocate, S.R.No.9379
+1cc to Mr.C.Paranthaman, Advocate, S.R.No.9261

NMI (CO)
GN (28/10/2021)