



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 18.03.2021
PRONOUNCED ON 23.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.298 OF 2017

Kumar

...Appellant/Petitioner

Vs

1. Ganapathy

2. Reliance General Insurance Company Limited,
Rais Tower, Plot No.2054, 2nd Avenue,
2nd Floor, Next to Senthil Nursing Home,
Anna Nagar,
Chennai 600 040.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2016 made in M.A.C.T.O.P.No.3643 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mrs.A.Subadra

For Respondents : R1 -Exparte
Mrs.C.Bhuvanasundari for R2



JUDGMENT

The appeal is filed by the injured claimant for enhancement of compensation.

2. The appellant herein claiming that he sustained nasal bone fracture, cut in upper lip, zygomatic bone fracture, maxilla injury, swelling in the right leg, right arm, right wrist Grade II fracture in Mandible and Elles, in the road accident occurred on 15.04.2013 at about 06.45 p.m., when he was riding his bicycle from West to East direction, Sengadu Chetty street, near Kancheepuram Chettinadu Co-operative Bank, attributing negligence on the part of the driver of Eicher Van bearing Registration No.TN-21-AK-6799, who dashed against his bicycle, filed claim petition seeking Rs.5,00,000/- as compensation against the owner of the lorry and its Insurance Company.

3.The Insurance Company filed counter resisting the claim on the ground that it was the negligence of the claimant, who recklessly drove his vehicle without noticing the Eicher Van proceeding. He has attributed to the alleged accident by his negligence. The injury and the disability claimed are exaggerated and the claimant is not entitled for the compensation claimed.

4. The Tribunal after considering the evidence awarded a sum of Rs.1,18,600/- as compensation with 7.5% interest payable from the date of filing the petition i.e. 23.04.2013 till the date of realisation except for Rs.5,000/- awarded towards future medical expenses.

5. In the appeal for enhancement, it is contended that the Tribunal failed to consider the age, income and the injury sustained by the claimant. At the time of accident, the claimant was 30 years old, working as a Security Officer at S.P.K.S. Service, Kancheepuram earning Rs.10,000/- per month. However, the Tribunal has fixed only Rs.6,500/- as monthly income and awarded compensation for the loss of income for 2



months alone. The appellant sustained fracture of cervical vertebrae and nasal bone fracture, cut injury in upper lip and multiple injuries all over the body. Surgery was done to unite the fractures. He was admitted as inpatient at Government Hospital at Kancheepuram from 15.04.2013 to 18.04.2013 and thereafter, admitted at Global Hospital for further treatment from 22.05.2013 to 25.05.2013. The Doctor, who clinically examined has assessed 35% disability whereas the Tribunal has not considered those medical records and has fixed only 20% disability and awarded Rs.60,000/-. The disability caused due to nasal bone fracture, cut injury in upper lip were not considered. The pain and suffering caused due to this injury not adequately compensated by the Tribunal. Hence, the learned counsel appearing for the appellant submitted that the award passed by the Tribunal has to be enhanced under all the heads including the disability and loss of income.

6.Per contra, the learned counsel for the Insurance Company submitted that the medical record like discharge summary of the Government hospital as well as Global hospital, Chennai indicate that the appellant sustained cervical spine injury. The Doctor who has clinically examined has assessed 35% disability. Whereas his evidence is not supported by any worksheet and guidelines. Further, the assessment of disability is not to the whole body. For the injuries sustained, the Tribunal has rightly assessed 20% disability. The discharge summary issued by the Global Hospital has suggested the patient mobilisation with cervical collar. The hospital has diagnosed C5-6, C6-7 disc protrusion causing spinal canal stenosis. For the said protrusion anterior cervical discectomy and fusion done on 22.05.2013 and he was asked to come forward for review after four weeks. There is no evidence to show that the appellant had undergone any further treatment.

7.Heard the learned counsels. Records perused.

8.The accident is proved. The liability to pay is accepted. As far as quantum, the disability certificate issued by P.W.2, who has examined patient on 08.02.2015 after two years has recorded pain and stiffness neck, movements restricted, neck flexion 0 to 10° only rotation restricted, weakness of upper limb muscles, difficulty in lifting or holding heavy objects. X-ray



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findings cervical fusion metal in situ and for the said disability, he has assessed 35% partial permanent as per IMC guidelines, but no working sheet annexed and whether 35% disability is for whole body and part of the body, is not mentioned. In the cross-examination, he admits that he has examined the claimant after two years and protrusion of C5 to C7 cervical spine got corrected through the surgery. For the said injury, the Tribunal has fixed 20% disability. Though the claimant has stated that he had cut injury over the lip and nasal bone fracture, the said injuries are not substantial in nature and not reflected in the discharge summary of Global Hospital or in the Discharge Summary of the Government Hospital. In fact, in the X-ray taken at Government Hospital, they have recorded that X-ray reveals no fracture of nasal bone. The Tribunal on appreciating the evidence has awarded a sum of Rs.1,18,600/- as per the following break up:

Compensation under Various Heads	Award passed by this Court
Disability	Rs. 60,000/-
Pain and Suffering	Rs. 20,000/-
Extra Nourishment	Rs. 2,000/-
Transport to Hospital	Rs. 3,000/-
Damages to Clothes	Rs. 500/-
Attender Charges	Rs. 2,600/-
Medical Expenses	Rs. 7,500/-
Future Medical Expenses	Rs. 5,000/-
Loss of income	Rs. 13,000/-
Loss of amenities	Rs. 5,000/-
Total	Rs. 1,18,600/-

9.The award under the conventional as well as non conventional heads are fair and just as per the evidence adduced by the claimant.



Therefore, this Court finds that there is no reason to interfere with the award amount and hence, the award of the Tribunal is confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
IV Court of Small Causes,
Chennai.

Copy To

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

+1cc to Mrs.M.Malar, Advocate, S.R.No.18897

CMA NO.298 OF 2017

VGII(CO)
RLP(15/09/2021)