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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.04.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.3041 of 2017

R.Appavoo

.. Appellant/Claimant

/versus/

1.R.Karthik

(The first respondent remained exparte before the Tribunal. Hence, notice may be dispensed with)

2.The Branch Manager,
M/s National Insurance Company Limited,
Divisional Office,
No.127, Aruvi Block, First Floor,
Bharathiyar Salai,
St.Pauls Complex,
Triuchirapalli 620 001.

.. Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order in M.C.O.P.No.100 of 2016, dated 08.08.2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondents: Mr.D.Baskaran for R2
R1-Exparte

J U D G M E N T

(This case has been heard through Video Conferencing)

This appeal filed by the claimant seeking enhancement of compensation awarded by the Tribunal for the injury sustained in the road accident.

2.The case of the claimant/appellant is that on 16.10.2015 at about 06.15 p.m., while he was riding his Splender two motorcycle bearing Reg.No.TN-46 E-5320 along Perumbalur-Attur



main road from east west near Koneripalayam Bye-pass Rountana, a Eicher lorry bearing Reg.No.TN-45-BF-5793 proceeding from west to east driven rash and negligently dashed the motorcycle and caused the injury to him.

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3. In the accident the claimant sustained fracture on anterior wall of right frontal sinus, fracture both bones in right leg, fracture of left hand galeazzi and fracture in left hand forearm, lacerated wound in left hand and left knee, fracture of nasal bone, fractures in left chest 5th and 6th ribs with small pleural effusion/hemothorax. The claimant was admitted at Government Hospital, Perumbalur. Thereafter, he was shifted to ABC hospital, Trichy. He was treated as in-patient between 16.10.2015 and 23.10.2015. At the time of the accident, the claimant was 58 years old, working as Foreman in T.N.E.B., Poolambadi. Claiming compensation of Rs.20,00,000/-, the claim petition was filed against the owner of the Eicher lorry and its insurer.

4. The Insurance Company/2nd respondent herein has filed counter wherein the claim was resisted on the ground that the Eicher lorry bearing Reg.No.TN-45-BF-5793 was not insured under the insurance company and the income of the claimant and the nature of the injury which he sustained are not the manner in which the claimant had narrated. Infact, the claimant drove his motor cycle in a hectic speed in the middle of the road in the Koneripalayam Bye-pass Rountana without following the rules and met with the accident. He had no valid driving license to ride the motorcycle. The sketch prepared by the Investigating Officer show that the accident caused due to the negligence of the claimant. Therefore, the claimant is not entitled for any compensation.

5. Before the Tribunal, the claimant had examined himself as PW-1. He was submitted to Medical examination by the Board and the Board has certified that the claimant had sustained 7.5% partial permanent disability. The disability certificate issued by the Board marked as Ex.C1. Besides, the petitioner has marked 20 documents to support of his case.

6. The Tribunal taking note of the salary certificate of the claimant marked as Ex.P15 and the medical records like CT-scan, discharge certificate and X-Ray had awarded a sum of Rs.1,58,086/- and from which, 10% has been deducted for his contributory negligence.

7. The said award is under challenge on the ground that the Tribunal failed to take note of the fact that the accident occurred solely due to the negligence of the Eicher lorry driver and the case was registered against him under the First



Information Report marked as Ex.P1. Therefore, the reduction of 10% towards contributory negligence is uncalled for and unjustified. The Tribunal failed to consider the nature of the injury and disability caused due to the injury. The period of treatment and medical expenses supported by bills has not been considered by the Tribunal. Rejection of medical bills on the ground that they are photocopy and non-mentioning of the hospital name in which he underwent the treatment is very flimsy and therefore, the award has to be interfered.

8.The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the Tribunal after taking note of the discharge certificate given by the Medical Board, had awarded a sum of Rs.22,500/- towards partial permanent disability fixing Rs.3000/- per unit disability. Further, it has also awarded a sum of Rs.95,386/- for the loss of income during the treatment period, which is excessive and double payment, since there is no proof to show that the claimant was not paid during the treatment period. Having employed in TNEB, he had been paid his salary even during the medical leave and his medical expenses were reimbursed. Therefore, learned counsel appearing for the 2nd respondent/Insurance company submits that there is no reason to interfere with the award of the Tribunal.

9.This Court, on considering the evidence, finds that though the First Information Report, which is marked as Ex.P1, was registered against the lorry driver, inspite of specific defence that the claimant has no driving license, to disprove it, the claimant has produced his driving license and he has only produced the driving licence of the offending lorry driver, which is marked as Ex.B20. Therefore, for want of driving licence, the reduction of 10% as contributory negligence is justifiable and needed. Hence, this Court finds nothing error in deducting 10% towards contributory negligence.

10.As far as the pain and suffering is concerned, the Tribunal has awarded Rs.10,000/- and Rs.25,200/- towards transportation, which is fair and reasonable. So, needs no interference. The Tribunal has disbelieved the medical bills marked as Ex.P11 and Ex.P12 on the ground that they are either photocopy or not from the hospital from which the claimant took treatment. Furthermore, the Tribunal has also taken note of the fact that the claimant had got the reimbursement of medical expenses under the medical insurance coverage and therefore, rejected the bills produced by the claimant which are marked Ex.P11 and Ex.P12. This Court take note of the fact that the claimant in the said accident had suffered united fracture of both bones in right leg and united fracture isolated radius left. The Board has assessed 7.5% disability. It is true that



the claimant has not produced any contra evidence to disbelieve the presumption that the medical expenses were reimbursed under the medical insurance policy. That is the reason why he has not produced the original bill but has produced only photocopy. At the same time, this Court also take note of the fact that the claimant, who was admitted in the hospital as in-patient for the injury, had taken treatment for about 8 days and X-ray and CT scan had taken to diagnose the nature of the injury sustained by him. Though the claimant has claimed nearly Rs.1,20,000/- for medical expenses, which is not properly supported by original bills, this Court is of the view that even if that expenses had been reimbursed, he would have spent some money towards medicine which could not be covered under reimbursement scheme. Therefore, taking note of the nature of the injury and period of hospitalisation, this Court is of the view that the claimant shall be paid another sum of Rs.10,000/- towards medical expenses.

11.The modified award of this Court reads as below:-

Sl. No.	Head of the awards	Award passed by the Tribunal	Award of this Court	Reduced/Enhanced/Confirmed/awarded
1.	Loss of income 47,693x2	95,386-00	95,386-00	Confirmed
2.	Pain and sufferings	10,000-00	10,000-00	Confirmed
3.	Extra nourishment and attender charges	5,000-00	5,000-00	Confirmed
4.	Disability 3000x7.5	22,500-00	22,500-00	Confirmed
5.	Transport charges	25,200	25,200-00	Confirmed
Total		1,58,086-00	1,58,086-00	
10% deducted for contributory negligence of the claimant			1,42,277-00	
			10,000-00	Awarded
Total			1,52,277-00	

12.The Insurance Company/2nd respondent is directed to deposit the enhanced award amount with interest at the rate of 7.5% p.a, from the date of petition till the date of realisation, within a period of eight weeks, from the date of receipt of a copy of this order. On such deposit, the



claimant/appellant is permitted to withdraw the said amount on filing appropriate application.

13. With this enhancement, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Perambalur.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.21790

C.M.A.No.3041 of 2017

AK (CO)
SU (07/10/2021)