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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.1728 of 2018

Rajaprakash

... Appellant/Claimant

Vs.

1. M.Shanmugavel (Driver) Set exparte

2. R. Karnan (Owner) Set exparte

3. The New India Assurance Co. Ltd,
Rep. By its Branch Manager,
1st Floor, Maja Apartment,
149, Bharathiar Road,
Karaikal.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records pertaining to the award passed in MACTOP.No.53 of 2011 dated 18.01.2012 on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal and enhance the amount of compensation of Rs.7,78,180/- with 7.5% interest from the date of petition dated 22.02.2011 to the extent of disallowed amount of compensation of Rs.7,78,180/- out of the total compensation claimed of Rs.9,50,000/- by modifying the award passed in MACTOP No.53 of 2011 dated 18.01.2012 with costs.

For Appellant : Mr.R.Natarajan

For Respondents : Ms.D.Helen Margaret Deepa
for Mr.K.Thirunavukarasu for R3
R1 & R2 - Exparte

J U D G M E N T

The claimant in MACTOP.No.53 of 2011 on the file of the Motor Accident Claims Tribunal at Karaikal / District Court at Karaikal is the appellant herein.

2.He is aggrieved by the compensation granted by award dated 18.01.2012 for injuries suffered in an accident, which had occurred on 04.05.2010 at around 09.00 a.m. at Thillai Nagar, Thirunallar Road, Karaikkal and caused by a Mahindra Van bearing



registration No.PY-02-C-0257.

3.The nature of the injuries suffered by him are as follows:

“Multiple Injury all over his body, Fracture of right leg ankle communities, Fracture of both bone of his right leg, Cervical spine injury, four teeth were broken front inciser broken, Right hand fingers injury. Its continuing effect is Physical Disability.”

4.In this connection, an FIR in Crime No.34 of 2010 under Sections 279 & 338 of I.P.C. had been registered by the Karaikkal Traffic Police Station, Karaikkal. On consideration of the evidence produced and the medical bills produced, the Tribunal had finally granted a total compensation of Rs.1,71,820/-. The break-up is as follows:

For pain and sufferings	Rs.25,000/-
For extra nourishment	Rs. 5,000/-
For permanent disability	Rs.30,000/-
For loss of income	Rs.22,000/-
For medical expenses	Rs.86,820/-
For transportation charges	Rs. 3,000/-

Rs.1,71,820/-

5.Expressing grievance over the quantum granted, the claimant had filed the present appeal.

6.Heard the learned counsels.

7.The contention of the learned counsel for the appellant is that the Tribunal had misdirected itself in determining the disability at 30%, even though P.W.2 / Medical Professional had examined the claimant and determined the disability at 45%. It is contended by the learned counsel that this reduction in disability requires to be revisited by this Court and interfered with.

8.The learned counsel pointed out that the claimant was working as a Security Officer in District Court at Karaikkal and had also qualified himself by studying M.Sc., M.B.A. It was therefore, stated that there is a possibility that he would prosper further and earn increased salary in the future. It was also pointed out that though medical bills had been produced, not all of them had been considered by the Tribunal and in some of the medical bills have been rejected owing to the fact that the name of the claimant was not given.



9.Learned counsel pointed out that all of the medical bills produced as documents relate only to the claimant and for the treatment of the injuries suffered by him. It was also pointed out by the learned counsel that even after the award, there was necessity for taking treatment and in this connection, produced several medical bills in the form of a typed set before this Court. The learned counsel therefore, urged that the expenses incurred towards medical treatment subsequent to the date of the award should also be considered.

10.The learned counsel for the appellant also generally assailed the quantum of compensation granted under the other conventional heads and more particularly, also the fact that having determined the disability at 30%, the Tribunal had taken just Rs.1,000/- per percentage and stated that this also requires revisitation by this Court.

11.The learned counsel for the respondent however justified the award and stated that the Tribunal had actually taken into consideration several medical bills, for which, they were no prescriptions and for which, the name of the claimant was also not found. It was therefore, urged that the amounts granted towards the medical bills will have to be re-considered by this Court by subtracting the amounts in certain medical bills and adding amounts in certain medical bills, which have been omitted to be considered by the Tribunal. The determination of disability at 30% was justified by the learned counsel for the respondent, who pointed out the cross-examination of P.W.2/Medical Professional, who stated that if proper physiotherapy is conducted, then there was every possibility of the disability being reduced by 10 to 15%. The learned counsel also pointed out that the compensation granted under other heads are just and require no interference.

12.With respect to the future medical treatment said to have been undertaken by the claimant and production of medical bills, it had been stated that producing these documents before the Appellate Court cannot be considered, as those documents have to be proved in manner known to law. It was also pointed out that some of the medical bills now produced were of the year 2011 prior to the date of the award of the Trial Court and stated that no reason has been advanced as to why they were not produced before the Trial Court during the course of Trial.

13.I have considered the arguments put forth.

14.It is a fact that the claimant/appellant had suffered injuries, owing to a motor accident which took place on 04.05.2010, when he was riding his motor cycle from his village to his work place at Vanjur at Thirunallar - Karaikkal Main



Road. When he was near Thillai Nagar, a Mahindra van bearing registration No.PY-02-C-0257, apparently driven in a rash and negligent manner had dashed against the motor cycle of the claimant and the claimant had suffered the injuries, which had been extracted above. It is the contention that he had been treated by various doctors at Vinodhagan Memorial Hospital at Thanjavur and also at Sugam Priya Hospital at Karaikkal.

15.During the course of trial, the claimant had examined himself as P.W.1 and had examined as P.W.2, Dr.Saravanan who had assessed the disability. He also marked exhibits P1 to P19. The relevant documents would be Ex.P1, the copy of the First Information Report, Ex.P3, the copy of the Insurance Certificate, Ex.P8 and Ex.P9 (series) which relate to the medical bills produced by the claimant, Ex.P12, which was the discharge summary of Vinodhagan Memorial Hospital at Thanjavur, Exs.P14, 15, 16 & 17 which relate to the prescription of the Doctors. The claimant had also produced his salary certificate as Ex.P11 and also the disability certificate as Ex.P13.

16.On the side of the respondents, neither were any witnesses examined nor were any documents produced.

17.The claimant had also produced Ex.P10 series, which was the expenses occurred due to the traveling from his place to the Hospitals for undertaking treatment for the injuries suffered.

18.The Tribunal during the course of discussion had taken up Point No.1, which was with respect to the nature of accident which had occurred and observed that the petitioner was driving his motor cycle on the left hand side and that the Mahindra Van bearing registration No.PY-02-C-0257 was driven in a rash and negligent manner and had dashed against the motorcycle of the claimant and therefore, determined that the negligence was on the part of the driver of the Mahindra Van. I would affirm that particular finding.

19.The Tribunal then proceeded to determine the compensation to be granted and whether the respondent/insurance company can be made liable to pay the compensation. With respect to the compensation, the Tribunal took into consideration Ex.P12, the discharge summary wherein it was stated that the claimant had sustained multiple injuries including fracture in both bones in the right leg and had been admitted in Vinodhagan Memorial Hospital at Thanjavur on 04.05.2010 and had been discharged on 26.05.2010. During this long period as an in-patient, the prescriptions of the Doctors and the medical bills for purchase of the medicines had been produced as documents. In some of the medical bills, the name of the claimant was given, in some of the bills, the name of the claimant was not given.



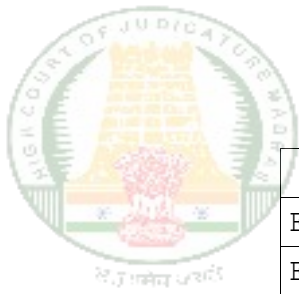
20. Let me not enter into a microscopic inspection of the various medical bills produced owing to the fact that while the claimant was an inpatient, it is to be generally understood and accepted that whoever was attending to him, could have gone over to the Pharmacist and purchased the medicines. At that particular point of time, that particular individual who had purchased the medicines would not even have imagined that the medical bills given by the shop keeper would have to be produced before a Court of law and would be scrutinized by a Court of law, to be admitted as having been genuinely incurred or having been prepared to inflate the claim. Therefore, I would take on record the medical bills as presented. The Tribunal had granted, a sum of Rs.86,820/- towards the medical bills and I would, affirm the same.

21. Mr. R. Natarajan, learned counsel for the appellant stated that even subsequently the appellant had incurred expenses towards treatment. Since the documents produced today will have to be subjected to proof, I would give credence to the fact that subsequent expenses had been incurred for treatment and grant an amount of Rs.15,000/- towards the additional medical expenses which could have been incurred by the appellant owing to the injuries suffered.

22. The Tribunal had taken a sum of Rs.1,000/- per percentage and taking into consideration the fact that he had been quite substantially qualified by studying M.Sc., M.B.A., and there was also a prospect that he might shift his employment, and if he so does, there would be difficulty in discharging that particular work, let me compensate that particular fact by increasing the amount per percentage to Rs.3,000/-.

23. The disability determined is retained at 30% in view of the evidence of P.W.2 in cross-examination that a responsibility had been cast on the appellant to do proper physiotherapy and if he does so, the disability would reduce. Therefore, towards the permanent disability, a sum of Rs.3,000 X 30 = Rs.90,000/- is granted. Additionally, I would grant a sum of Rs.5,000/- towards attender charges. Let me not interfere with any of the other heads granted under compensation. The total compensation granted now is as follows:-

Heads	Amounts
For Pain and Suffering	Rs.25,000/-
For extra nourishment	Rs.5,000/-
For permanent disability(3000 X 30)	Rs.90,000/-
For loss of income	Rs.22,000/-



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Heads	Amounts
For medical expenses	Rs.86,820/-
For transportation charges	Rs.3,000/-
For attender charges	Rs.5,000/-
For further medical expenses	Rs.15,000/-
Total	Rs.2,51,820/-

24.The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined as Rs.1,71,820/- to Rs.2,51,820/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.80,000/-, less the amount, if any already deposited, with interest at 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mp/kkn

To:-

1. The Motor Accident Claims Tribunal -
District Court, Karaikkal.
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.R.Natarajan, Advocate, S.R.No.24328

C.M.A.No.1728 of 2018

RSV(CO)
CT 25/05/2022