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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.611 OF 2018

A.Subramani

... Appellant/Petitioner

Vs

1. V.R.Nataraj

2. Royal Sundaram Alliance Insurance Co. Ltd.,
Rals Tower IInd Floor, No.2054,
2nd Avenue, Next to Senthil Nursing Home,
Anna Nagar, Chennai - 600 040

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 for enhancement of compensation against the Judgment and decree dated 12.10.2017 in M.C.O.P.No. 6453 of 2013 on the file of the Motor Accidents Claims Tribunal at II Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For 2nd Respondent : Mr.G.Vasudevan

J U D G M E N T

The claimant in M.C.O.P.No. 6453 of 2013 has filed the present Appeal aggrieved by the award of Rs.78,590/- granted by the Motor Accident Claims Tribunal, Chennai / II Court of Small Causes, Chennai, by an award dated 12.10.2017 for injuries suffered owing to the Motor Accident.

2. The necessity to file the claim petition arose owing to the fact that on 01.10.2012, when the claimant A.Subramani, was riding his motor cycle bearing Registration No. TN-07-AX-0131 TVS XL ar around 10.45 in the morning proceeding towards Eldams road near Alwarpet signal, a car bearing Registration No. TN-38-



BK-5164 which was said to have been driven in a rash and negligent manner, had dashed against his motor cycle and consequently, he fell down and suffered grievous injuries.

3. Seeking compensation for such injuries, he preferred M.C.O.P.No. 6453 of 2013 before the II Court of Small Causes, Chennai, Motor Accident Claims Tribunal.

4. The second respondent/Royal Sundaram Alliance Insurance Company Ltd., had filed a counter denying their liability to pay compensation or to indemnify the owner of the car for any award is granted. They also questioned whether the claimant had a driving license at the time of the accident.

5. On the basis of the rival pleadings, the parties were invited to graze the witness box. During trial, the claimant examined himself as PW-1 and examined an independent witness as PW-2 and examined a medical professional as PW-3 to speak about the disability suffered owing to the injuries caused. Exs. P-1 to P-8 were also marked. The relevant documents would be Ex.P-1 copy of FIR, Ex.P-2 Accident Register, Exs. P-3 and P-4 Discharge Summaries from two separate hospitals, Ex.P-5 medical expenses, Ex.P-6 the bills for personal expenses, Exs. P-8, P-11, P-16 and P-17 are X-rays and MRI Scan report, Exs. P-9 and P-12 salary certificates, Ex.P-10 a copy of the charge sheet, Ex.P-18 the disability certificate. The respondents did not examine any witness. They did not produce any documents.

6. On the basis of the available evidence, the Tribunal proceeded to determine the first issue whether the accident was caused owing to the rash and negligent manner in which the car bearing Registration No. TN-38-BK-5164 had been driven. It was found, placing reliance on Ex.P-1, copy of the FIR in Crime No. 504/AM3/2012 registered by Adyar Traffic Investigation, Mylapore Range, Chennai, under Sections 279 and 337 IPC against the driver of the car and the further fact that Ex.P-10 copy of the charge sheet that the accident occurred only owing to the rash and negligent manner in which the car was driven that it was the said car driver who was responsible for the accident and the point was answered accordingly. I would affirm that particular finding.

7. The Tribunal then proceeded to examine whether the claimant had a driving license and had come to a conclusion that he did not possess any driving license and therefore, had fixed the contributory negligence on the part of the claimant at 50% which, in my opinion will have to be interfered with and the contributory negligence can be determined to be 10% and not 50%.



8. The Tribunal then proceeded to determine the liability for payment of any award and placed such burden on the Insurance company. I would affirm that particular finding.

9. The Tribunal then proceeded to determine the compensation to be paid. In this connection, the Tribunal examined EX.P-5 medical bills which totally amounted to Rs.1,49,566/-. However, the Tribunal had stated that insurance money is public money and cannot be spent lavishly and had reduced the grant of expenses towards medical bills.

10. It must be kept in mind that the medical bills relate to expenses incurred by the injured. At that particular point of time when he incurred those medical bills, he had not filed any claim petition. He could not have even imagined that there is possibility of reimbursement granted by the insurance company. He could never have imagined that the insurance company would be called upon to pay the amount awarded if he filed a claim petition. Therefore, the drawing of a connection between insurance money and medical expenses incurred much prior to the filing of the claim petition, in my opinion is a little too far stretched and therefore I will have to interfere with that particular reasoning of the Tribunal and grant the medical bills in entirety. As a matter of fact, the original medical bills have been produced before this Court and it is seen that the name of the appellant is found in the medical bills and they are for the relevant period during which the he was in hospital owing to the accident and also relate to the injuries suffered.

11. The Tribunal had granted a sum of Rs.2000/- towards attender charges and I would interfere with that particular aspect and grant a sum of Rs.5,000/- towards attender charges.

12. With respect to the disability, a perusal of the records shows that owing to the particular accident aforementioned, the claimant had suffered the following injuries:-

"Traumatic brain injury with degloving scalp injury. Cervical spine injury and multiple injuries all over the body."

13. For treatment for the said injury, he had been admitted on 01.10.2012 to the Government General Hospital, Chennai and had taken treatment from 02.10.2012 to 03.10.2012. He was then shifted to Dr.Mehta's Hospitals, and took treatment from 03.10.2012 to 10.10.2012. It was claimed that he also took treatment as an out patient in the said hospital. With respect to the injuries, medical professional / PW-3 had determined that



the injuries can be assessed as having caused 60% disability. I would however determine the disability at 40%. The reason behind that particular determination of the disability at 40% is that any injury to the spine would cause discomfort continuously and over a period of time, the Tribunal had given an opinion that it can be rectified by doing physiotherapy, but it must also be kept in mind that physiotherapy in that particular area, may not be possible and even if it is to be done would require assistance from a third person for physiotherapy. It may not even be rectified and a further operation might have to be done to rectify the spine. Therefore, I would retain the disability at 40%.

14. The claimant was working as a Tea Master at Sakthi Snacks and claimed that he was earning a sum of Rs.12,000/- per month. The Tribunal had determined that he would have earned a sum of Rs.6,000/- per month and determined Rs.200/- per day as his income. I would retain that amount at Rs.6,000/- at 40% disability. With respect to the disability I would fix Rs.3,000/- per percentage which would mean (Rs.3000 x 40) at Rs.1,20,000/- for disability and for loss of income. I would also grant loss of income for a period of 6 months and that would also indicate (Rs.6000 x 6) = Rs.36,000/-. The Tribunal granted a sum of Rs.10,000/- towards pain and suffering, which can be enhanced to Rs.20,000/-. The Tribunal had granted a sum of Rs.5000/- towards transport expenses which I would increase to Rs.7000/-. The Tribunal had granted a sum of Rs.5000/- towards extra nourishment and I would grant a sum of Rs.7,000/-. Towards attender charges, I would grant a sum of Rs.5,000/-. The total compensation now granted is as follows:-

(i) Medical bills	=	Rs.1,50,000/-
(ii) attendance charges	=	Rs. 5,000/-
(iii) Loss of income	=	Rs. 36,000/-
(iv) pain and suffering	=	Rs. 20,000/-
(v) transport to hospital	=	Rs. 6,000/-
(vi) Extra nourishment	=	Rs. 6,000/-
(vii) Disability	=	Rs.1,20,000/-

Total		Rs.3,43,000/-

The total compensation now worked as Rs.3,43,000/-. I would reduce 10% towards contributory negligence (3,43,000/- - 34,300/-), it would come to Rs.3,08,700/-.

15. In fine, the Appeal is partly allowed. No costs. The award is modified. The compensation award is enhanced to Rs.3,08,700/-.



16. The second respondent is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of filing of the petition till 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/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. No order as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Motor Accident Claims Tribunal
The II Court of Small Causes,
Chennai.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

+2ccs to M/s.Ramya V Rao, Advocate, S.R.No.25363

+1cc to Mr.G.Vasudevan, Advocate, S.R.No.25269

C.M.A.No.611 of 2018

NMI (CO)
RLP (12/05/2022)