

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.01.2022

Pronounced on : 14.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.866 of 2018

M.Perumal

.. Appellant

Vs.

1.K.Manimekalai
(R-1 set Ex-parte before Trial Court)

2.The Manager,
Oriental Insurance Company Limited,
Third Parties Claims Hub, Oriental House,
2nd Floor, No.216, Prakasam Salai,
Broadway, Chennai-600 108.

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 09.10.2017 made in M.C.O.P.No.5421 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Judge-FAC, III Court of Small Causes, Chennai.

For Appellant : Mr. A.S. Vijay Anand

For 2nd Respondent : Mr. D. Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant-claimant seeking enhancement of compensation awarded by the Tribunal in the judgment, dated 09.10.2017 made in M.C.O.P.No.5421 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Judge-FAC, III Court of Small Causes, Chennai.

2. The appellant is the claimant in M.C.O.P.No.5421 of 2014 on the file of the Motor Accidents Claims Tribunal, IV Judge-FAC, III Court of Small Causes, Chennai. He filed the above claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.03.2014. According to the appellant, on 21.03.2014 at about 7.00 pm while he was riding a motorcycle bearing Reg.No.TN 22 BA 4366 with his relative one Jagan Dhanasekaran as pillion rider, a container lorry bearing Reg.No.TN-28-L-2452 came in the same direction in a rash and negligent manner and dashed against the motorcycle driven by him. In the impact, the appellant sustained grievous injuries all over the body. Immediately, the appellant was taken to Jaya Hospital, Sriperumbadur, where, after giving first aid, he was shifted to Parvathy Ortho and Neuro Hospital, Chromepet, Chennai. It is further stated that at the time of accident, the appellant was 42 years old and he was carrying on trading business and also

was the owner of a provisional shop at Vallakottai whereby he was earning Rs.30,000/- per month. By reason of the injuries sustained in the accident, the appellant had lost his livelihood and therefore, he filed the claim petition claiming a sum of Rs.4,00,000/- as compensation against the owner of the lorry and its insurer.

3. The claim petition was resisted by the 2nd respondent/Insurance Company, disputing the details furnished in the claim petition with respect to nature of injuries, period of treatment, occupation and income of the claimant. In the counter statement, it is stated that the appellant rode his motorcycle without driving licence and he was under the influence of alcohol at the time of accident. It is further stated that the appellant has to prove that there was no violation of policy conditions at the time of accident. In the absence of any proof in that regard, the second respondent is not liable to indemnify the first respondent for the loss arising out of the accident. In so far as the nature of injuries is concerned, the second respondent stated that the appellant has to explain the injuries suffered by him by producing relevant medical evidence. But, the appellant has not produced the original medical records to that effect. Hence, the second respondent prayed for dismissal of the claim petition.

4. The 1st respondent, who is the owner of the lorry, remained ex-

parte before the Tribunal.

5. Before the Tribunal, the appellant/claimant examined himself as P.W.1 and Exs.P1 to P9 were marked on his side. On the side of the second respondent/Insurance Company, no witness was examined or document produced.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the Eicher Jumbo, Heavy Motor Vehicle with container belonging to the first respondent herein and directed the second respondent-Insurance Company, being insurer of the said vehicle, to pay a sum of Rs.1,52,900/- as compensation to the appellant under the following heads:

1. Disability	: Rs. 75,000.00
2. Pain and suffering	: Rs. 25,000.00
3. Extra nourishment	: Rs. 2,500.00
4. Transport to Hospital	: Rs. 2,500.00
5. Damages to clothes	: Rs. 500.00
6. Attender charges	: Rs. 800.00
7. Medical Expenses	: Rs. 22,116.00
8. Future Medical Expenses:	Rs. 2,500.00
9. Loss of Income	: Rs. 19,500.00
10. Loss of Amenities	: <u>Rs. 2,500.00</u>
	<u>Rs.1,52,916.00</u>

7. Not being satisfied with the amount awarded by the Tribunal, the

appellant has come out with the present appeal for enhancement of compensation. However, the second respondent-Insurance Company has not filed any appeal as against the liability fastened on them.

8. The learned counsel for the appellant would mainly contend that the appellant had underwent a surgery during the course of his hospitalisation. He had spent enormous amount towards hospitalisation charges. To substantiate the same, the appellant also produced medical bills under Ex.P2, Exs. P6 and Ex.P7. However, the Tribunal omitted to consider Ex.P6, Medical bills on the ground that they relates to payment of advance paid at the time of hospitalisation and the amount thereof have been adjusted in the final bill. However, the fact remains that Ex.P2, medical bills relates to first aid taken at Jaya Hospital and Ex.P6 relates to payment made towards surgery charges, Anaesthetist charges, operation theatre charge and they were clearly indicated thereof. Therefore, the learned counsel for the appellant vehemently contended that non-consideration of the amount mentioned in Ex.P2 and Ex.P6 by the Tribunal warrants interference by this Court. That apart, the learned counsel submits that a meagre amount was awarded by the Tribunal under various other heads such as Extra Nourishment, Pain and Suffering etc., and he prayed for appropriate enhancement.

9. Per contra, the learned counsel appearing for the second respondent would only support the award passed by the Tribunal as reasonable and prayed for dismissal of the appeal.

10. I have heard the learned counsel for both sides and perused the materials placed on record.

11. Admittedly, there is no dispute with respect to the liability of the Insurance Company to pay compensation. Therefore, this Court is inclined to venture into those aspects in this appeal.

12. Insofar as the amount awarded under the head medical expenses is concerned, the Tribunal has taken only Ex.P7 medical bills and rejected Ex.P6, Medical bills on the ground that it is an advance receipt. The Tribunal has also not discussed anything about Ex.P2, medical bills of Jaya Hospital. It is the case of the appellant that immediately after the accident, he was taken to Jaya Hospital, Sriperumbudur where he was given first aid and thereafter he was shifted to Parvathy Hospital, Chrompet, Chennai where he was admitted as inpatient from 22.03.2014 to 24.03.2014 for three days. However, it is

stated that after his discharge, the appellant has taken treatment as inpatient periodically for about six months. It is also stated in the deposition of the appellant as P.W.1 that he had underwent an Ortho surgery and incurred a sum of Rs.75,722/-. This Court thoroughly scanned the medical records produced on behalf of the appellant. The appellant has produced Ex.P2, Ex.P6 and Ex.P7 to prove the medical expenses. The discharge summary indicates that the appellant was advised to undergo physiotherapy for some time. The Tribunal in the impugned award, has totally awarded a sum of Rs.22,116/- as per Ex.P7 only. However, the claimant has filed Ex.P6, medical bills to show that he has paid a sum of Rs.30,000/- on 22.03.2014, and further sum of Rs.1,722/- and Rs.44,000/- on the date of his discharge i.e., on 24.03.2014, under Ex.P7 series. While so, it is not known as to why the Tribunal has awarded a sum of Rs.22,166/- alone towards medical expenses based on Ex.P7. It is stated that the appellant has also undergone surgery during the course of hospitalisation in his right shoulder which is evident from the inpatient Bill dated 24.03.2014 (07.04 pm) in which it shows that a sum of Rs.28,000/- was paid towards surgery, a sum of Rs.3,500/- paid towards Anesthetist fee and a sum of Rs.10,500/- paid towards Operation theatre charges. Therefore, going by the above documents, this Court is of the view that the appellant is entitled for a sum of Rs.75,722/-

(Rs.30,000+1,722+44,000) under Ex.P6. Apart from that, under Ex.P2, the appellant has spent a total sum of Rs.5,105/- towards first aid treatment taken at Jaya Hospital. Even in Ex.P3, Discharge Summary, it is noted about the first aid taken by the appellant at Jaya Hospital. Therefore, by taking note of Ex.P2, Ex.P6 and P7, the amount awarded towards medical expenses is enhanced to Rs.1,02,943/- (Rs.22,116/- - awarded by the Tribunal + Rs.75,722/-+ Rs.5,105/- omitted by the Tribunal).

13. Further, the amount of Rs.75,000/- awarded under the head Disability, and Rs.25,000/- awarded under the head pain and suffering, in the opinion of this Court, are just and proper in view of the nature of injuries suffered by the appellant and hence they are confirmed.

14. For the heads Extra nourishment and Transportation charges, the Tribunal has awarded a sum of Rs.2,500/- each which is meagre and hence it requires enhancement. Accordingly, Rs.5,000/- is awarded each towards Extra nourishment and Transport to Hospital.

15. The Tribunal has awarded a sum of Rs.400/- per day for Attender charges. On perusal of the medical records produced by the appellant, it

shows that the claimant has been hospitalized for three days and therefore it would proper to award a sum of Rs.1200/- at the rate of Rs.400/- per day, towards Attender charges.

16. The other amount awarded by the Tribunal are reasonable and they do not require any interference by this Court. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	75,000	75,000	Confirmed
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Extra nourishment	2,500	5,000	Enhanced
4.	Transport to Hospital	2,500	5,000	Enhanced
5.	Damages to clothes	500	500	confirmed
6.	Attender charges	800	1,200	Enhanced
7.	Medical expenses	22,116	1,02,943	Enhanced
8.	Future Medical Expenses	2,500	2,500	Confirmed
9.	Loss of Income	19,500	19,500	Confirmed
10.	Loss of Amenities	2,500	2,500	Confirmed
	Total	Rs.1,52,916/-	Rs.2,39,143/-	Enhanced by Rs.86,227/-

17. In the result, the judgment and decree, dated 09.10.2017 made in M.C.O.P.No.5421 of 2014 on the file of the Motor Accidents Claims Tribunal,

IV Judge-FAC, III Court of Small Causes, Chennai is modified. This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,52,916/- is hereby enhanced to Rs.**2,39,143/- (Rupees Two lakhs thirty nine thousand one hundred and forty three only)** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the amount deposited on filing proper application. No costs.

14.03.2022

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Index: Yes / No

Speaking Order/Non-speaking Order

To

1.IV Judge-FAC,
Motor Accidents Claims Tribunal,

III Court of Small Causes,
Chennai.

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

S.KANNAMMAL, J.

vum

C.M.A.No.866 of 2018

Pre-delivery order in
C.M.A.No.866 of 2018

14.03.2022