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C.M.A.(MD)No.1449 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved Date : 16.09.2021

Delivered Date : 27.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) No.1449 of 2013

and

M.P. (MD) .No.1 of 2013

National Insurance Co.Ltd.,
Rep.by its Branch Manager
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant

Vs.

1.Nelson
2.Monikandan
3.Aji
4.Gilbert

... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 08.12.2012 made in MCOP No.107 of 2008 on the file of Motor Accidents Claims Tribunal (Sub Court, Padmanabhapuram and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan
For 1st Respondent : Mr.M.Subash Babu
For Respondents 2 to 4 : No Appearance

JUDGMENT

This appeal filed against the award passed in M.C.O.P.No.107 of 2008 dated 08.12.2012, on the file of the Motor Accidents Claims Tribunal, Special (Sub Court), Padmanabhapuram.

2.The appellant herein is the third respondent, the first respondent herein is the claimant and the respondents 2 to 4 herein are the respondents 1, 2 and 4 in the main claim petition.

3.Brief substance of the petition in M.C.O.P.No.107 of 2008 is as follows:-

On 01.12.2006 at about 8.45 p.m., the petitioner along with his wife and child were travelling in a two wheeler bearing Registration No.74-D-8570. At that time, the first respondent drove another two wheeler bearing Registration No.TN-74-V-6390 in a rash and negligent manner and dashed against the petitioner's motor cycle. The petitioner sustained multiple injuries and prayed a sum

<https://hcservices.ecourts.gov.in/hcservices/>



of Rs.7,00,000/- as compensation.

4.Brief substance of the counter filed by the first and second respondents is as follows:

The amount of compensation stated in the petition is high. The accident happened only due to the negligent of the petitioner. The respondent are not liable to pay compensation to the petitioner.

5.Brief substance of the counter filed by the third respondent is as follows:-

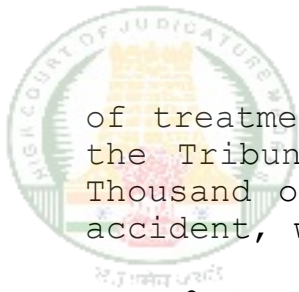
The first respondent drove his Hero Honda passion plus bike bearing registration No.TN-74-V-6930 in a slow and careful manner. It was the petitioner, who was rash and negligent driving his motorcycle. The petitioner dashed against the motor cycle of the first respondent. The petitioner is the responsible for the accident and the petition is to be dismissed.

6.Brief substance of the counter filed by the fourth respondent is as follows:-

The fourth respondent is an unnecessary party to the proceedings. He is no way connected with the accident or the vehicles involved in the accident. The vehicle, which was driven by the petitioner bearing Registration No.TN-74-D-8570 Hero Honda was sold to the petitioner by this respondent on 17.10.2016 i.e., before the date of accident. The accident was not known to this respondent and no intimation was ever given to this respondent and he prayed the petition to be dismissed.

7.On the side of the appellant, one witness was examined and eight documents were marked. No witness was examined and no documents marked on the side of the respondents. The Tribunal has awarded a sum of Rs.4,74,317/- (Rupees Four Lakhs Seventy Four Thousand Three Hundred and Seventeen only) to be paid by the third respondent therein. Against the same, the appellant has preferred this appeal.

8.On the side of the appellant, it is stated that the quantum of compensation granted by the Tribunal is excessive and arbitrary. Only for 15% partial permanent disability, the Tribunal has awarded a sum of Rs.4,74,317/- (Rupees Four Lakhs Seventy Four Thousand Three Hundred and Seventeen only). The amount awarded under various heads are excessive. The Tribunal has awarded a sum of Rs.40,000/- (Rupees Forty Thousand only) for each of the grievous injuries and also awarded a sum of Rs.3,000/- (Rupees Three Thousand only) for each of the simple injuries, which is unacceptable. A sum of Rs.3,25,917/- (Rupees Three Lakhs Twenty Five Thousand Nine Hundred and Seventeen only) was awarded towards medical expenditure without



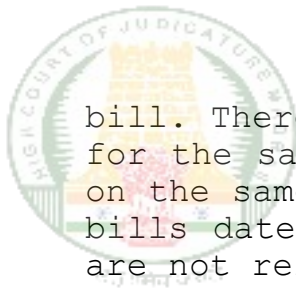
of treatment is high. After giving compensation for the injuries, the Tribunal has awarded a sum of Rs.36,000/- (Rupees Thirty Six Thousand only) for loss of income for six months from the date of accident, which is not reasonable.

9.On the side of the appellant, it is stated that the Doctor has issued a disability certificate assessing the disability at 15%. The injured is continuing the same job and there is no functional disability. The claimant is only an Auditor and that 15% of partial permanent disability will not affect his career. The doctrine of functional disability was not considered by the Tribunal. The Tribunal has awarded compensation for four grievous injuries and three simple injuries and again the Tribunal has awarded separate compensation for 15% disability and the Tribunal has awarded compensation of loss of income for the period of treatment and for the another period of six months and prayed the order to be set aside.

10.On the side of the first respondent, it is stated that the appellant sustained seven injuries including four grievous injuries. He took treatment as 'inpatient' for 31 days and the Tribunal has awarded Rs.3,000/- (Rupees Three Thousand only) for each of the simple injuries and Rs.10,000/- (Rupees Ten Thousand only) for each of the grievous injuries, which is very reasonable. The medical expenses was proved through medical bills, Ex.P6 and the finding of the Tribunal is reasonable.

11.It is seen that the disability fixed by the Doctor is only 15% and the Doctor was not examined and the disability certificate alone was marked as Ex.P7 and no X-ray or scan report were annexed with the disability certificate. For 15% disability, the Tribunal has awarded a sum of Rs.15,000/- (Rupees Fifteen Thousand only) as compensation and again the Tribunal has awarded a sum of Rs.43,000/- (Rupees Forty Three Thousand only) for the injuries. Hence, it is decided that the compensation awarded both for the injuries and for the disability are not reasonable. Hence, it is decided that the claimant is entitled to Rs.30,000/- (Rupees Thirty Thousand only) for 15% of the disability sustained by him.

12.The claimant is having only 15% disability. The case sheet and discharge summary were not produced by the claimant. A perusal of the medical bills reveals that there are two bills with the same bill No.3514, dated 31.12.2006. In both the bills, anaesthesia charge, consultant visiting charge, consulting charge, doctor visiting charge, surgeon charge were mentioned. In the bill dated 11.12.2006, doctor visiting charge for 10 days was Rs.500/- (I.e. Rs.50/- per day). ICU charges was only Rs.65/-. Operation theatre charge and implants charge and surgeon charge were only Rs.4,000/-. Anaesthesia charge was only Rs.750/-, whereas, in the bill dated 31.12.2006, anaesthesia charge was Rs.5,500/-. Operation theatre charge was Rs.5,500/- in one bill and Rs.15,000/- in the other



bill. There is no possibility for two bills to have the same number, for the same treatment but for different amount to have been issued on the same date. A comparison of the bill dated 11.12.2006 with the bills dated 31.12.2006 reveals that both the bills dated 31.12.2006 are not reliable.

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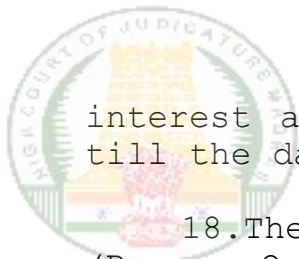
13.The petitioner has produced two more bills in Bill no.3515, dated 19.02.2007. In both the bills dated 19.02.2007, anaesthesia charges, consultant visiting charge, consultant charge, doctor visiting charge, surgeon charge, physiotherapy charge registration charge, implant charge, operation theatre charge and room rent all are mentioned. The implant charge in one bill is Rs.15,000/- and in the other bill is Rs.10,000/-. Theatre charge in one bill is Rs.20,000/- and the same in the other bill is Rs.15,000/-. A comparison of the charges mentioned in the bills dated 01.12.2006 with the bill, dated 19.02.2007 reveals that the charge under the same head are different.

14.In the bill dated 11.12.2006, it was mentioned that the patient was admitted on 01.12.2006 and was discharged on 11.12.2006 and that the inpatient No is 7938. But in the bill dated 31.12.2006, it was stated that the patient was admitted on 01.12.2006 and was discharged on 31.12.2006 and the inpatient No is 7937. This discrepancies were not explained by the claimant.

15.The bills dated 31.12.2006 is numbered as 3514 and the bills dated 19.02.2007 is numbered as 3515. The inpatient No in the bill dated 31.12.2006 is 7937. The inpatient No in the bill dated 19.02.2007 is 8294. When so many patients have taken treatment as inpatient during the period, there is no possibility of the bills to have this consecutive serial numbers that too after a period of two months. So, this clearly reveals that this bills are prepared only for claiming compensation and this bills are not genuine. All this four bills are not supported by case sheet or discharge summary. Hence, it is decided that the claimant is entitled to Rs.30,000/- towards medical charges.

16.The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.2,000/- towards damages to clothes and articles and Rs.5,000/- towards attendant charges, which are reasonable. For the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.18,000/- towards temporary loss of income. For 15% disability, a sum of Rs.30,000/-, Rs.3,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment is awarded. In total, a sum of Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) is awarded as compensation.

17.In the result, this Civil Miscellenaous Appeal is **partly allowed**. The first respondent is entitled to a sum of Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) as compensation with



interest at the rate of 7.5% from the date of the claim petition till the date of realization.

18. The appellant herein is directed to deposit Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier. Excess amount, if any deposited shall be refunded to the appellant herein. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Subordinate Judge/
Motor Accidents Claims Tribunal
Padmanabhapuram.

Copy to

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2673[F] dated 27/01/2022)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-3257[F] dated 31/01/2022)

**C.M.A. (MD)No.1449 of 2013
27.01.2022**

RS (28.02.2022) 5P-6C