



C.M.A. No.1682 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1682 of 2023

N. Vinothkumar

... Appellant

Vs.

1.R. Raja

2.The United India Insurance Co. Ltd.,
No.134, Silingi Building,
Greems Road, Chennai – 600 006.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2021 made in M.C.O.P.No. 6371 of 2016 on the file on the Motor Accident Claims Tribunal, II Special Court of Small Causes, Chennai.

For Appellant : Mr. Ariyalur Annasamy Venkatesan

For Respondents : Ms. C. Harini
for Mr. M.B. Gopalan, for R2



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 25.11.2021 made in M.C.O.P. No.6371 of 2016 on the file of the II Special Court of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. The appellant filed M.C.O.P. No.6371 of 2016 on the file of the II Special Court of Motor Accident Claims Tribunal, Small Causes Court, Chennai claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.11.2013.

3. According to the appellant, on 19.11.2013 at about 02.45 pm, while he was travelling as a pillion rider in the motorcycle bearing Registration No.TN-05-Q-2795, proceeding on the Puzhal – Madhavaram, National Highway road, near Nagathamman Temple, hit a van which was proceeding in the same direction from behind, as a result the appellant sustained injuries.



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Hence, the appellant claimed compensation against the respondents.

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4. The first respondent remained ex parte before the Tribunal.

5. The second respondent filed a counter stating that the accident did not take place in the manner alleged by the claimant and hence, they are not liable to pay compensation; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

6. The appellant examined himself as PW1 and marked Ex.P1 to Ex.P14. The second respondent did not examine any witness or mark any document on their side. Court document was marked as Ex.C1 / Disability certificate issued by the Medical Board.

7. The Tribunal after considering the evidence and documents filed on the side of the appellant, held that the accident occurred due to the rash and negligent riding of the motorcyclist and directed the second respondent to pay a sum of Rs.57,500/- as compensation to the appellant.



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WEB COPY 8. Aggrieved by the said award, the appellant has preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that though the appellant had produced discharge summary and other medical records to show that he had suffered “*Grade I Compound Communitied Fracture Tibial Condyle – Left*”, the Tribunal had not awarded any compensation under the head disability. The learned counsel further submitted that the Tribunal had erroneously rejected the medical bills submitted by the appellant on the ground that they were xerox copies. The learned counsel had filed the original bills before this Court to prove that the appellant incurred a sum of Rs.18,804/- towards medical expenses.

10. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared for him.

11. The learned counsel for the second respondent per contra submitted



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that the second respondent had verified the medical bills and found it to be genuine. However, the learned counsel submitted that the appellant had not examined any Doctor or was subjected to examination by the Medical Board to assess the disability. Therefore, the Tribunal was right in awarding the compensation and no interference is called for.

12. The question involved in the instant appeal is -

Whether the compensation awarded by the Tribunal is just and reasonable?

13. The appellant had marked Ex.P2, Accident register, Ex.P12, Discharge summary, Ex.P13, Medical bills and Ex.P14, Wound certificate to prove the nature of injuries suffered by him. On perusal of the discharge summary, it is found that the petitioner had sustained "*Grade I Compound Communitated Fracture Tibial Condyle – Left*". The appellant had deposed before the Tribunal stating that he was working as a MTC Driver and had also produced the copy of the salary bills for the year 2017 to show that he was working as a Driver at the time of accident. Considering the nature of injuries



suffered by the appellant which is not disputed, this Court is of the view that it would be just and reasonable to fix the disability at 20%. Since the accident is of the year 2013, Rs.3,000/- is awarded per percentage of disability. Hence, the appellant is entitled to Rs.60,000/- under the head disability. The appellant had marked Ex.P13, medical bills which was rejected by the Tribunal since the original bills were not produced. However, the original medical bills have been filed before this Court. The learned counsel for the second respondent on instructions fairly submits that the said bills are genuine. Therefore, the appellant is entitled to Rs.18,804/- towards medical expenses. Considering the period of treatment, the attender charge is enhanced from Rs.1,500/- to Rs.5,000/-. The notional income is taken as Rs.10,000/- in the absence of any evidence. The loss of earning is computed for a period of three months. Hence, the compensation under the head “loss of earning” is enhanced to Rs.30,000/-. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.57,500/- to Rs.1,52,804/-, break-up is as follows: -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	25,000/-	25,000/-	Confirmed
2.	Transportation	4,000/-	4,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Attender charges	1,500/-	5,000/-	Enhanced
5.	Disability	-	60,000/-	Awarded
6.	Medical bills	-	18,804/-	Awarded
7.	Loss of earning	17,000/-	30,000/-	Enhanced
	Total	57,500/-	1,52,804/-	Enhanced by Rs.95,304/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.57,500/- is hereby enhanced to Rs.1,52,804/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent 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 (6) weeks from the



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date of receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the same, along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

31.08.2023

Index: Yes/No

Neutral Citation: Yes / No

AT

To

1.The II Special Court of Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer
VR Section,
High Court, Madras.



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SUNDER MOHAN, J

AT

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