



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.783 of 2023

S.Ravi

... Appellant

Vs.

1.N.Kamaraj

2.Reliance General Insurance Co. Ltd.,

Plot No.2054, 2nd Floor,
2nd Avenue (Next to GRT),
Anna Nagar, Chennai-40.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 09.10.2017 passed in M.C.O.P.No.4541 of 2011 on the file of the Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : M/s.K.Varadha Kamaraj

For second Respondent : Mr.P.Suresh Srinivasan



JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant against the judgment and decree dated 09.01.2017 on the file of the Motor Accident Claims Tribunal (VI Small Causes Court) Chennai, questioning the quantum of compensation awarded by the Claims Tribunal.

2. The Appeal is filed for enhancement of the compensation. On 15.04.2011, while the claimant was traveling on T.H. Road near Rajakadai Bus stop, at that time, a Auto belonging to the first respondent and insured with the second respondent/Insurance Company, driven by its Driver, in a rash and negligent manner, hit the claimant, due to which, he sustained grievous injuries. The claimant was admitted in the hospital on 15.04.2011 and after treatment discharged on 08.05.2011. The claimant sustained Fracture Mandible Left Parasymphysis and the claimant though filed a claim petition seeking a sum of Rs.2,50,000/- as compensation but restricted the same to Rs.1,50,000/-.

3. The first respondent owner of the vehicle remained exparte and the second respondent insurance company filed a counter disputing all the averments raised in the claim petition apart from stating that the



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Driver of the insurer did not possess Badge and therefore, the second respondent was not liable to pay the compensation.

4. Before the Claims Tribunal, the petitioner examined himself as P.W.1 and the Doctor was examined as P.W.2. Exs.P.1 to P.6 were marked in support of the claimant's case. The Respondent examined R.W.1/ Deputy Manager of Reliance General Insurance Company and marked Exs.R.1 to R4.

5. The Tribunal on assessment of entire evidence on record, returned a findings of negligence against the Driver of the auto. The Tribunal on its finding that the Driver of the insurer did not possess a valid badge for driving the auto directed the second respondent to pay and recovery from the insurer. On the quantum of compensation, the Tribunal on assessment of entire evidence on record, awarded a sum of Rs.75,000/- along with interest at the rate of 7.5% per annum. Not satisfied with the quantum of compensation awarded by the Tribunal claimant has this appeal for enhancement of compensation.

6. The learned counsel for the claimant submitted that the



Tribunal erred in reducing the disability from 35% assessed and certified by Doctor, to 10% without any reasonable grounds. The learned counsel further submitted that award of the Tribunal towards Transport, Extra nourishment and loss of amenities and pain and suffering were on the lower side. The learned counsel therefore submitted that the compensation awarded by the Tribunal was meagre and the same needed to be enhanced. The learned counsel for the respondent submitted that award of the Tribunal was just, fair and reasonable and did not call for any interference.

7. I have heard the learned counsels appearing on both sides and perused the entire materials placed on record.

8. The short point to be decided in the appeal is whether the appellant is entitled for enhancement of compensation. It is not disputed that the appellant suffered fracture of the Mandible Left Parasymphysis and ORIF was conducted on the claimant on 28.04.2011. The Tribunal reduced the percentage of disability from 35% to 10% on the ground that the petitioner was able to speak properly, and that the lower Jaw bone was not affected and there was no mal union. I am of the view that the



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reasons given by the Tribunal cannot be countenanced because apart from speaking, the lower Jaw bone is vital for several other purposes like chewing, biting etc. In my view the assessment of disability can be fixed at 25% instead of 35% assessed by the Doctor because the Doctor who assessed and certified the disability did not treat the claimant. Therefore, the appellant would be entitled to Rs.75,000/- towards disability of 25% at the rate of Rs.3000 per percentage of disability. It is seen from the discharge summary, Ex.P.4 that the appellant was admitted in hospital on 15.04.2011 and discharged on 08.05.2011. The appellant underwent surgery for fixing a plate for the fracture of mandible sustained by him. I am therefore of the view that the award of the Tribunal towards various heads needs to be modified. The award of the Tribunal is therefore modified as follows;

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and Suffering	10,000/-	20,000/-	Enhanced
2.	Transport and Extra Nourishment	5,000/-	10,000/-	Enhanced
3.	Loss of Income	13,000/-	13,000/-	Confirmed



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	for two months (2 x Rs.6,500/-)			
4.	Disability	30,000/-	75,000/-	Enhanced
5.	Attender Charges for 24 days (24 x Rs.500/-)	12,000/-	12,000/-	Confirmed
6.	Loss of Amenities	5,000/-	10,000/-	Enhanced
	Total	Rs.75,000/-	Rs.1,40,000/-	Enhanced by Rs.65,000/-

9. The appellant shall be entitled to enhanced compensation of Rs.1,40,000/- along with interest at the rate of 7.5% per annum. Both the learned counsels represent that as the appeal was filed with a delay of 1116 days, an order was passed directing that the appellant shall forfeit interest for the delay period of 1116 days. It is therefore made clear that appellant shall not be entitled for interest for the delay period of 1116 days. The learned counsel for the respondent submitted that the Driver of the insurer, did not possess a valid Badge. The Tribunal directed the second respondent insurance company to pay and recover from the first respondent and this direction of the Tribunal is confirmed. The learned counsel for the second respondent further submitted that entire award amount was already deposited. Therefore, there shall be direction to the



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second respondent to deposit the enhanced compensation of Rs.65,000/- along with interest at the rate of 7.5% per annum within a period of four weeks from the date of receipt of copy of this order. It is made clear that the interest for a period of 1116 days shall be forfeited by the claimant. The Civil Miscellaneous Appeal is partly allowed. No costs.

05.04.2023

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Index:yes/no

Internet:yes/no



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N.MALA, J.

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To
The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai

C.M.A.No.783 of 2023

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