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C.M.A.No.3333 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.3333 of 2012

K.Sekar

... Petitioner / Appellant

Vs.

1.D.Venkatesan

2.The Oriental Insurance Co. Ltd.,
No.8, Esplanade,
UIL Building,
Chennai – 600 108.

... Respondents / Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree passed by the Additional District Judge, Accidents Claim Tribunal/Fast Track Court No.1 Chennai, in M.C.O.P.No.4007 of 2007 dated 23.11.2010 awarding Rs.11,000/-.

For Appellant : Mr.N.S.Sivakumar

For Respondent 1 : Ex-parte in the Lower Court itself

For Respondent 2 : Mr.M.J.Vijayaraaghavan



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This Civil Miscellaneous Appeal has been filed challenging the award and decree dated 23.11.2010 made in M.C.O.P.No.4007 of 2007 on the file of Additional District Judge, Accident's Claim Tribunal/I Fast Track Court, Chennai.

2. The brief facts of the case are as follows:

On 20.03.2007 at about 2.30 hrs, when the appellant was sleeping near the road side platform at Mecnical Road near Raghul Foundation, Kilpauk, Chennai, the first respondent's lorry bearing Registration No.TN-20-AA-4559 was driven in reverse in a rash and negligent manner without looking the appellant and ran over his leg and caused grievous injuries to the appellant. Stating that the accident had occurred, due to the rash and negligent driving of the driver of the lorry, the appellant filed a claim petition before the Tribunal for a compensation of sum of Rs.2,00,000/- towards loss of expenses Part I & II. On consideration of the materials and evidence available on record, the Tribunal has awarded a compensation of Rs.11,000/-. Aggrieved by this order, the appellant has come forward with this present



appeal.

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3. Learned counsel for the appellant submitted that the appellant is a lorry driver, aged about 26 and earning a sum of Rs.250/- per day. Due to the accident caused by the rash and negligent driving by the driver of the first respondent's lorry, the appellant sustained fracture on his right leg. For the said accident, a case was also registered in Crime No.198 of 2007 on the file of G3 Police Station, Kilpauk, Chennai – 600 010 and the copy of the same was marked as Ex.P.1

4. Learned counsel for the appellant further submitted that the appellant has under went a treatment at Puthur from 20.03.2007 to 31.07.2007 for the sustained fracture and the medical records pertaining to the same was marked on the side of the appellant as Ex.P.2., however, there was no evidence adduced on the side of the respondents. Hence, the learned counsel for the appellant prayed for allowing this appeal by enhancing the compensation awarded by the Tribunal.

5. Learned counsel appearing for the second respondent submitted that



the appellant has to prove that the first respondent has got valid insurance policy for the vehicles involved in the accident and the driver of the vehicle had valid and effective license at the time of the accident. However, the present case on hand, the appellant has not produced any driving license and also failed to prove that he was working as a driver and earning a sum of Rs.250/- per day. Hence, the compensation awarded by the Tribunal is just, proper and reasonable one and not want any interference by this Court.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent/Insurance Company and the first respondent being remained ex-parte in the Trial Court and no appearance before this Court despite the notice was served to him.

7. It is evident from the finding of the Tribunal that the copy of the FIR which was marked as Ex.P.1 clearly establishes the accident has happened only due to the negligence of the driver of the first respondent's lorry and the only contention of the first respondent is that the appellant himself is responsible for the alleged accident, but, there is no contra evidence in this



case and the tribunal has relied on the judgment of this Court in the case of Ramachandran and others Vs. Valliammal and others reported in 1992 1 MLJ Page 188, wherein it was held that the accident has happened only due to the rash and negligent driving of the driver and the main contention of the second respondent/Insurance company is that the first respondent being the owner of the alleged lorry had no valid insurance policy at the time of accident is not acceptable in the absence of any evidence. Hence, the Tribunal has come to the conclusion that the second respondent has valid policy of insurance at the time of accident.

8. In regard to shifting of the appellant from K.M.C Hospital, Kilpauk, Chennai to Puthur Hospital, the appellant has claimed a sum of Rs.2,000/- towards transportation to hospital, however, the same was rejected by the Tribunal, since no record was produced to prove the same. Further, the appellant has contented that he was working as a driver and earned a sum of Rs.250/- per day and due to this accident, he could not attend his work for about six months, for which he claimed a sum of Rs.26,000/- towards loss of earning and partial loss of earning. But no proof was produced for his



earning, except his oral evidence and also not produced the driving license.

The contention of the second respondent that the appellant has not find any job at any point of time is not acceptable to this Court and after considering the oral and documentary evidence available, the Tribunal has awarded a sum of Rs.11,000/- as compensation to the appellant which are as follows:

<i>Head</i>	<i>Compensation claimed by the appellant</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>
Transport	2,000/-	500/-
Loss of earning and partial earning	26,000/-	2,500/-
Extra nourishment	1,000/-	500/-
Damages to cloths and article	1,000/-	500/-
Compensation for pain and sufferings	25,000/-	5,000/-
Permanent disability and loss of earning power	1,35,000/-	2,000/-
Total	1,90,000/-	11,000/-

The above compensation totalling a sum of Rs.11,000/- paid to the appellant under various heads, which in the opinion of this Court is not just proper, reasonable and hence warrants interference.

9. In regard to transportation, the Tribunal has granted only a sum of Rs.500/-, whereas the appellant has claimed a sum of Rs.2,000/-. It is



pertinent to note that Puthur is the place, where the appellant was taking treatment is situated in neighbouring state of Andhra Pradesh, which is more than 120 k.m from Chennai, since the appellant sustained fracture in the right leg would have had some difficulty in travelling in a public bus to go to Puthur for treatment and for the same, he would have even hired some private transportation. Hence, the award of sum of Rs.500/- towards transportation in the absence of any records produced by the appellant is not sustainable.

10. In regard to the loss of earning and partial loss of earning, the appellant has claimed a sum of Rs.26,000/- by contending that he was working as a driver and earning a sum of Rs.250/- per day, however, failed to produce any proof for the same except the oral evidence and did not produce the driving license. Moreover, the Tribunal has observed that the reasonable person of this age will not sit idle in the home and could easily earn a sum of Rs.100/- per day is correct and acceptable and even according to this observation, the appellant, who did not work for a period of six months will come to a sum of Rs.18,000/- despite this award, a sum of Rs.2,500/- is not reasonable and not acceptable to this Court.



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11. In regard to the claiming of a sum of Rs.1,000/- towards extra nourishment, the Tribunal has observed that the appellant has sustained fracture in the right leg and needs some extra nourishment for better healing and proper growth, despite this observation, the Tribunal has granted only a sum of Rs.500/- which is not reasonable and acceptable to this Court.

12. The appellant has claimed a sum of Rs.1,000/- towards compensation for damages to clothing and articles and the Tribunal has observed that the appellant has not produced any record but need to prove the damages caused to the cloths and belonging is unsustainable. In this case, the appellant was sleeping near the road side and vehicle belonging to the first respondent ran over on the legs of the appellant. In this kind of case, there will not be any record to prove the damages caused to clothing and articles. Hence, the compensation of Rs.500/- awarded by the Tribunal towards damages to clothing and article is also not acceptable.

13. In regard to the pain and suffering, the appellant has claimed a sum of Rs.25,000/-. It is an admitted fact that immediately after the accident, the



appellant was taken to K.M.C hospital, Kilpauk, Chennai for treatment and continued his further treatment at Puthur and also produced Ex.P.2, the particulars of Puthur treatment; establishes that the appellant has underwent different treatment for fracture, which will prove the highness of pain. In this regard, the respondent has contended that the injuries were simple and superficial and has not caused any untold misery pain or mental agony. Moreover, the appellant has not examined any doctor to prove the injury and treatment is not acceptable to this Court for the reason that it is an admitted fact that the appellant suffered fracture in the right leg. In this circumstances, the Tribunal, awarding a compensation of sum of Rs.5,000/- towards pain and suffering is not reasonable and proper.

14. The next head i.e., towards compensation in continuing of permanent disability and loss of earning power, the appellant has claimed a sum of Rs.1,35,000/-. In this case, the appellant has not taken any steps to examine the doctor who has given substantial treatment or the expert to prove the disability sustained by the appellant. As per section 163 A (5) II Schedule Disability in non-fatal accidents; injuries deemed to be result in



permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per schedule I under Workmen's Compensation Act, 1923. Hence, the award of sum of Rs.2,000/- is unjust, unreasonable, unacceptable and improper. Therefore, the compensation awarded to the appellant under various heads warrants interference by this Court for the reasons stated supra. Thus, the total compensation awarded by the Tribunal is modified to Rs.70,500/- from Rs.11,000/-, the details which are as follows:

<i>Head</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation enhanced by this Court (Rs.)</i>
Transport	500/-	1,500/-
Loss of earning and partial earing	2,500/-	18,000/-
Extra nourishment	500/-	1,000/-
Damages to cloths and article	500/-	1,000/-
Compensation for pain and sufferings	5,000/-	15,000/-
Permanent disability and loss of earning power	2,000/-	34,000/-
Total	11,000/-	70,500/-

15. In fine, this appeal is allowed. The second respondent/Insurance



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company is directed to deposit the aforesaid modified compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying in the deposit to the bank account of the appellant through RTGS within a period of two weeks thereafter. No costs.

05.01.2023

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Index : Yes/No

Speaking Order : Yes/No

Neutral Judgment : Yes/No

To

1. The Additional District Judge,
Accidents Claim Tribunal/Fast Track Court No.1,
Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court.



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J.SATHYA NARAYANA PRASAD,J.

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