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C.M.A. No.1729 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1729 of 2018

D.Gnanasekaran

... Appellant

Vs.

Senior Manager Mail
Indian Postal Department
No.37, Greaves Road
Chennai - 600 002

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2017 made in MCOP No.3802 of 2012 on the file of the Motor Accidents Claims Tribunal (in the II Court of Small Causes), Chennai.

For Appellant : M/s.M.Sudha

For Respondents : M/s.S.N.Parthasarathi



JUDGMENT

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The above Civil Miscellaneous Appeal is filed by the claimant against the Judgment and Decree dated 05.10.2017 made in MCOP No.3802 of 2012 on the file of the Motor Accidents Claims Tribunal (in the II Court of Small Causes), Chennai, for enhancement of compensation.

2. The appellant is the claimant and the respondent is the owner of the offending vehicle.

3. The case of the claimant is that on 23.04.2012 at about 7.15 hrs., when the claimant was riding his motor cycle bearing Regn. No.TN-22-S-0679, along the Chrompet GST Road near Vaishav College Signal point towards Pallavaram direction with due care and diligence, a Van bearing Regn. No.TN-01-AH-9923, belongs to the Indian Postal Department, which came from Pallavaram to Tambaram direction in a rash and negligent manner without following the road traffic rules and with dangerous speed dashed against the motor cycle of the claimant. As a result, the claimant sustained grievous injuries.



4. The claimant filed a claim petition in in MCOP No.3802 of 2012 on the file of the Motor Accidents Claims Tribunal (in the II Court of Small Causes), Chennai, against the owner of the offending vehicle, claiming compensation of Rs.6,00,000/- for the injuries sustained by him.

5. In order to substantiate the claim before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 11 documents were marked as Ex.P.1 to Ex.P11. On the side of the respondent, one witness was examined as R.W.1 and 3 documents were marked as Ex.R1 to Ex.R3.

6. The Tribunal, after hearing both sides and considering the materials, awarded compensation of Rs.92,000/- with interest at 9% from the date of petition i.e. 27.08.2012 to till the date of realisation.

7. Challenging the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.



8. The learned counsel for the appellant/claimant submitted that the Tribunal has not properly considered the medical bills and the disability certificate produced by the claimant. The learned counsel submitted that though the claimant had submitted the medical bills/Ex.P5 for Rs.88,506/-, the Tribunal without any valid reasons, granted only Rs.34,150/- towards medical expenses. The learned counsel further submitted that though the doctor/P.W.2 had issued disability certificate assessing partial and permanent disability at 75%, the Tribunal has fixed only 8% and awarded compensation of Rs.24,000/- towards disability by adopting Rs.3,000/- per percentage of disability. The Tribunal has not given any valid reasons for non consideration of the entire medical bill amount and reducing the disability at 8%. Therefore, the award passed by the Tribunal does not reflect the "just compensation" and it is unjust and arbitrary which warrants interference.

9. The learned counsel for the respondent submitted that the doctor/P.W.2 who has issued the disability certificate, has not given any treatment to the claimant. The entire treatment was taken by the claimant in a Government Hospital and only for 2 days, he was admitted as inpatient. Hence the compensation awarded by the Tribunal is a "just compensation". Therefore, there is no merit in the appeal and the same is liable to be



dismissed. The learned counsel further submitted that the respondent has already deposited the entire Award amount.

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10. Heard the learned counsel for the appellant and the learned counsel for the respondent.

11. Admittedly, the accident is not in dispute. The injuries sustained by the claimant is not in dispute. The liability is also not in dispute. The claimant has filed the present appeal for enhancement of compensation. The respondent has not filed any appeal either disputing the liability or quantum.

12. Though liability is not challenged, as far as the quantum is concerned, as stated by the learned counsel for the appellant/claimant, the appellant/claimant has produced the medical bills for Rs.88,506/- under Ex.P5. But the Tribunal has awarded only Rs.34,150/-.

13. A perusal of medical records viz., wound certificate and disability certificate shows that the appellant/claimant sustained fracture and also head injury. Though he was admitted in the hospital only for 2 days as inpatient, while taking inconsideration of the nature of injury sustained by him, he might have required some more time to recover from the ailment. It is not the case of the respondent that after discharging from the hospital, the appellant/claimant completely cured and there was no need for him to take any medicine or treatment after discharging from the hospital.



14. Therefore, considering the medical records and the evidence of P.W.1 and also of the fact that the Tribunal has not given any valid reason for not considering the entire medical bills amount, this Court finds that the findings given by the Tribunal in respect of medical expenses is erroneous. This Court considering the injuries sustained by the appellant/claimant and the treatment taken by him, finds that the appellant/claimant is entitled to the entire medical bill amount as per Ex.P.5 i.e. R.88,506/-.

15. As far as disability is concern, though P.W.2 has issued the disability certificate assessing the disability at 75% partial and permanent, he is not the one who gave treatment to the appellant/claimant. Further P.W.2 during his cross examination admitted that he had not seen any medical records of the appellant/claimant and therefore, the disability mentioned in the disability certificate issued by P.W.2 cannot be taken as it is. However, admittedly, due to the accident, the appellant/claimant sustained head injury, fracture and also underwent a surgery therefore, he suffered disability to some extent and there is no evidence to show that the appellant/claimant has fully recovered from the disability. Therefore, considering the medical records, the injury sustained by the appellant/claimant and the nature of treatment undergone by him, this Court fix the disability at 25% as permanent disability and the appellant/claimant is entitled to get compensation for 25% disability



instead of 8% disability at Rs.3,000/- per percentage of disability.

16. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	Medical Bills	Rs.34,150/-	Rs.88,506/-	Enhanced
2.	Disability	Rs.24,000/-	Rs.75,000/-	Enhanced
3.	Attender Charges	Rs.2,000/-	Rs.2,000/-	Confirmed
4	Loss of income	Rs.12,000/-	Rs.12,000/-	Confirmed
5	Pain and Sufferings	Rs.10,000/-	Rs.10,000/-	Confirmed
6	Transport to Hospital	Rs.5,000/-	Rs.5,000	Confirmed
7	Extra Nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
	Total	Rs.92,150/-	Rs.1,97,506/-	Enhanced
	Total Rounded off	Rs.92,000/-	Rs.1,97,510/-	



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17. The award of the Tribunal is modified by enhancing the compensation amount from Rs.92,000/- to Rs.1,97,510/-.

18. The respondent is directed to deposit the enhanced award amount of Rs.1,97,510/- to the credit of MCOP No.3802 of 2012 on the file of the Motor Accidents Claims Tribunal (in the II Court of Small Causes), Chennai, with cost and interest at the rate of 9% per annum, from the date of claim petition i.e. 27.08.2012 to till the date of realisation as awarded by the Tribunal, less the amount if any already deposited, within a period of four weeks from the date of receipt of copy of this judgment.

19. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

20. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount.

21. In the result, this Civil Miscellaneous Appeal is partly allowed.



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There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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P.VELMURUGAN. J.

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To

- 1.The Motor Accidents Claims Tribunal
(in the II Court of Small Causes), Chennai.
- 2.The Section Officer,
VR Section, High Court, Madras.

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