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C.M.A.No.2206 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2206 of 2023
and C.M.P.No.21231 of 2023

C.Amaresan

... Appellant

Vs.

1.PTS Annamalai

2. The Divisional Manager,

The United India Insurance Company LTd.,

No.95, Big Street, (First Floor),

Tiruvannamalai Town.

... Respondents

(No relief sought against the 1st respondent.

Hence notice may be dispense with)

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.06.2016 in MCOP.No.294 of 2013 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruvannamalai.

For Appellant : Mr.M.Sivakumar

For Respondents : Mr.D.Bhaskaran for R2

Notice to R1 is dispensed with



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J U D G M E N T

The Civil Miscellaneous Appeal is filed by the claimant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.294 of 2013, dated 06.06.2016, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruvannamalai.

2. The appellant has filed the claim petition stating that on 01.10.2012, while he was riding his two wheeler, at about 3.00 p.m., the driver of the first respondent bus, insured with the second respondent herein, came in a rash and negligent manner and dashed against the vehicle of the appellant, as a result of which the appellant sustained greivous injuries.

3. The first respondent, the owner of the offending vehicle, remained *ex-parte* before the Tribunal.

4. The second respondent/Insurance Company resisted the claim petition stating that the accident did not take place due to rash and negligent act of the driver of the first respondent vehicle and that in any event the



compensation claimed is excessive and prayed for dismissal of claim petition.

5. Before the Tribunal, the appellant examined P.W.1 and P.W.2 and marked 14 documents as Exs.P1 to P14. On the side of the second respondent/Insurance Company neither oral nor documentary evidence was adduced.

6. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent act of driver of the first respondent's vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.7,08,268/- as compensation to the appellant. Aggrieved over the said award, the appellant/claimant has preferred the instant appeal.

7. The learned counsel for the appellant/claimant submitted that though the award was passed in the year 2016, he has preferred the appeal belatedly, since, he incurred expenses, thereafter for medical treatment for the injuries suffered in the accident. The appellant had also produced the original medical bills evidencing the treatment taken subsequently. The learned counsel further submitted that the award under the head "Disability"



also requires enhancement. The Tribunal had awarded only a sum of Rs.2,000/- per percentage of disability. The learned counsel further submitted that the Tribunal did not award any compensation under the head "Attendant Charges". The learned counsel has produced the original medical bills and filed a petition under Order XLI Rule 27 under the Code of Civil Procedure in C.M.P.No.21231 of 2023 in C.M.A.No.2206 of 2023 to receive additional documents. Hence, the learned counsel prayed for enhancement of compensation.

8. Learned counsel for the appellant submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the first respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to the first respondent is dispensed with.

9. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the Tribunal has awarded just and reasonable compensation and therefore, the award does not call for any interference. The medical bills which are sought to be produced now are in respect to the treatment taken by the appellant/claimant subsequently after



the award was passed by the Tribunal. Therefore, the award of the Tribunal cannot be faulted. The learned counsel further submitted that on verification, the second respondent found the bills to be genuine.

10. Heard the learned counsel appearing for the appellant/claimant as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

11. The only question involved in this appeal is whether the appellant would be entitled for enhancement of compensation on the basis of the original bills evidencing the treatment, taken subsequently?

12. The appellant has filed C.M.P.No.21231 of 2023 in C.M.A.No.2206 of 2023 to receive additional documents. On perusal of the same, it is seen that the appellant had taken treatment after the award was passed by the Tribunal. But, considering all the said bills and submissions made by the learned counsel on either side, this Court is of the view that the



said application can be allowed. The documents filed by the appellant are accepted and hence, the C.M.P.No.21231 of 2023 is allowed.

13. It is seen from the original bills filed by the appellant that the appellant had incurred medical expenses to the tune of Rs.2,30,000/-, subsequent to the award passed by the Tribunal. There is no dispute with regard to the fact that these expenses were incurred in treating the injuries suffered by the appellant during the accident. Therefore, this Court is of the view that the appellant is entitled to a sum of Rs.2,30,000/- under the head "Future medical expenses". It is also seen that the Tribunal has awarded Rs.2,000/- per percentage of disability, whereas, the appellant is entitled to Rs.3,000/- per percentage of disability. Hence the award under the head "Disability" is enhanced to Rs.1,50,000/- (50% x Rs.3,000/-). On perusal of the award of the Tribunal, it is seen that the Tribunal has not awarded any compensation under the head "Attendant charges" and therefore, the appellant/claimant is entitled to a sum of Rs.25,000/ under the said head.

14. Thus, the compensation awarded by the Tribunal is modified as follows:



S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	1,00,000	1,50,000	Enhanced
2.	Pain and suffering	30,000	30,000	Confirmed
3.	Medical expenses	4,88,268	4,88,268	confirmed
4.	Transportation charges	20,000	20,000	confirmed
5.	Loss of earning power	60,000	60,000	confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Future medical expenses	----	2,30,000	Granted
8.	Attendant charges	----	25,000	Granted
	Total	Rs.7,08,268/-	Rs.10,13,268/-	Enhanced by Rs.3,05,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,08,268 /- is hereby enhanced to Rs.10,13,268/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined



by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. It is made clear that the appellant is not entitled for any interest for the delay period, on the enhanced amount of Rs.10,13,268/-, as per the order of this Court, dated 07.09.2022 in C.M.P.No.14350 of 2023 in C.M.A.SR.No.52230 of 2023. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

gba

Exhibits marked in Appellant's side :-

Ex.P.15 series – Medical Bills.

To

1.The Principal Subordinate Court,
Motor Accident Claims Tribunal,
Tiruvannamalai.

2.The Section Officer



VR Section

High Court of Madras, Chennai – 600 104.

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SUNDER MOHAN,J.

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