



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1707 of 2020

Suresh

.. Appellant

Vs.

1. Senthilkumar

2. The National Insurance Co. Ltd.,
Divisional Office, 2nd respondent Floor, JN Street,
Near Aristo Hotel, Puducherry.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment, dated 03.07.2020 in MACT.OP.No.70 of 2019 on the file of the Motor Accident Claims Tribunal, (III Addl. District Judge) Kallakurichi.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mrs.R.Sree vidhya R2
R1 - NDW

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation in the decree and judgment, dated 03.07.2020 in MACT.OP.No.70 of 2019 on the file of the Motor Accident Claims



Tribunal, (III Addl. District Judge) Kallakurichi.

WEB COPY

2. It is the case of the appellant that on 20.01.2019 when the appellant was riding his motor cycle bearing Registration No.TN 31BV 1867 from Kallakurichi to Asakalathur opposite to RR School between Chennai and Salem N.H.Road at about 9.30 hours, a car bearing Reg. No.TN 38 CJ 8821 belong to the first respondent, dashed against the motor cycle. As a result, the appellant sustained grievous injuries. Hence, the appellant herein, has filed a Claim Petition before the Motor Accident Claims Tribunal, claiming Rs.10,00,000/- as compensation under various heads. The Tribunal, after considering the pleadings, oral and documentary evidence, awarded a sum of Rs.6,88,000/- to the claimant as compensation.

3. For enhancement of compensation, the appellant-claimant has filed the present appeal challenging the award passed by the Tribunal.

4.The learned counsel appearing for the appellant contended that the Tribunal went in wrong in fixed income of the appellant Rs.5000/- per month as against the claim of Rs.10,000/- per month. The learned Tribunal



ought to have fixed the income of the appellant Rs.10,000/- per month as per oral evidence of appellant and considering the present economic conditions.

Further the Tribunal has awarded a sum of Rs.4,41,600/- towards loss of income, which is just compensation. Further, the Tribunal has fixed less compensation in respect of attendar charges, Transportation, extra nourishment and pain and sufferings and the Tribunal has not awarded any amount for loss of amenities, which warrants interference of this Court. Further, the accident had happened due to rash and negligent of the driver of the first respondent. Without considering the same, the Tribunal has fixed 30% negligence on behalf of the appellant, which is not sustainable one and the same has to be set aside. Hence, the appellant prayed to enhance the compensation, awarded by the Tribunal.

5. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that due to rash and negligent driving of the appellant, the accident had happened and therefore, he is responsible for the accident. Further, the learned counsel submitted that the Doctor assessed the disability at 46% as partial permanent disability, for which, the Tribunal has followed multiplier method and awarded



compensation, which is erroneous. However, the Tribunal has awarded compensation in respect of other heads, which are on higher side and hence, he prayed for dismissing the appeal.

6. The learned counsel further submitted that after passing judgment, the appellant has taken treatment and also had removed implant on 06.03.2021 and incurred medical expense at Rs.62,500/-. In order to prove the same, the appellant has produced the discharge summary and medical bills as additional documents, which was incurred by him. Hence, this Court may award the compensation towards medical expenses which was spent by the appellant.

7. Heard the learned counsel for the appellant as well as the second respondent and also perused the materials available on record.

8. The appellant is the claimant and the second respondent is the Insurance Company. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.



WEB COPY

9. According to the appellant, the first respondent driving a car in rash and negligent manner and dashed against the appellant and therefore, he sustained injuries, for which the law enforcing agency registered a case against the first respondent driver.

10. In order to prove the same, the appellant examined himself as PW1 and eyewitnesses were examined. On behalf of the respondent, there is no eyewitness or contra evidence was examined. In the absence of any evidence, the Tribunal has erroneously fixed 30% negligence on behalf of the appellant, which is unsustainable one and the same is liable to be quashed. Accordingly, this Court sets aside 30% negligence on the part of the appellant.

11. From the materials on record, it is seen that the Tribunal has awarded a sum of Rs.1,37,525/- towards medical bills and after passing judgment, the appellant has underwent treatment and spent a sum of Rs.62,500/- for his medical expenses. To that effect, he has produced the medical bills and discharge summary and the same was marked as



additional documents viz., Ex.P16 and P17, which was allowed by this Court vide order 16.09.2024. This Court perused the said bills and the discharge summary. The appellant has underwent treatment only for the injuries sustained in the accident and therefore, he is entitled to claim compensation towards medical expenses. The learned counsel for the insurer has also not disputed to award the compensation for medical bills and therefore, necessarily the said amount has to be awarded in favour of the appellant. This Court is inclined to award a sum of Rs.62,500/- towards medical bills, which he is entitled for. The other heads awarded in favour of the appellant by the Tribunal is just and reasonable and therefore, this court is not inclined to interfere with the other head. Accordingly, the order passed by the Tribunal stands modified:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Compensation for permanent disability $5000 \times 12 \times 16 \times$ $46/100$	4,41,600	4,41,600
Pain and sufferings	50,000	50,000
Transport charges	10,000	10,000
Extra nourishment	10,000	10,000
Attender charges	1000	1000



Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Medical Bills	1,34,525	1,97,025
Total	6,50,125	7,09,625/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed with following directions:

(i) *The negligence of 30% fixed on the part the appellant by the Tribunal is set aside;*

(ii) *the Insurance Company is directed to deposit balance 30% of the award amount with 7.5% interest, from the date of claim petition till date of deposit and also deposit a sum of Rs.62,500/- as ordered by this court towards medical bills, without interest, in the credit of claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. and*

(iii) *on such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.*

No costs.

22.12.2023

rli

Index : Yes



Speaking Order : Yes

WEB COPY

M.DHANDAPANI,J.

Rli

To

The II Judge, Motor Accident Claims Tribunal, (Small Causes Court)
Chennai.

C.M.A.No.1707 of 2020

22.12.2023