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C.M.A.No.1455 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1455 of 2023

P.Swaminathan

... Appellant

Vs.

1.K.Rajalingam

2.United India Insurance Co. Ltd.,

Motor Third Party Hub, Silingi Building,

Greens Road,

Chennai – 600 006.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2023 in MCOP.No.711 of 2020 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.P.Sankaranarayanan for R2

Notice dispensed with for R1

J U D G M E N T

The claimant had filed the appeal seeking enhancement of compensation awarded by the Tribunal in MCOP.No.711 of 2020, dated



20.03.2023, on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai.

2. According to the appellant, on 29.01.2020 at about 18.30 hours, while he was riding his motorcycle bearing Registration No.TN-50-F-2812, in GST Road, near Pallavaram Ponds Company Signal, the rider of the motorcycle bearing Registration No.TN-11-AA-9916 came from behind in a rash and negligent manner without observing the Traffic Rules and dashed against the two wheeler of the appellant, as a result of which the appellant sustained grievous 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 and filed a counter denying the averments made in the claim petition and stated that the rider of the offending vehicle did not possess a valid driving license; that the second respondent is not liable to pay compensation; and that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.



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5. Before the Tribunal, the appellant examined himself P.W.1 and the Doctor as P.W.2 and marked eleven documents as Exs.P1 to P11. On the side of the second respondent/ Insurance Company no witness was examined. However, three documents were marked as Ex.R1 and R3.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent riding of the offending vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.41,693/- as compensation to the appellant. Aggrieved over the said award, the appellant has preferred the instant appeal.

7. The learned counsel for the appellant submitted that the Tribunal had erroneously rejected the Disability Certificate marked as Ex.P.10 issued by P.W.2-Doctor, who had observed that the appellant suffered from fracture of Proximal TIBIA. P.W.2-Doctor, had assessed the permanent disability as 25%. The learned counsel further submitted that in the Accident Register Ex.P.1, it is stated that the appellant suffered Proximal TIBIA fracture. Therefore, the finding of the Tribunal holding that no records were produced to prove the injuries is erroneous. The learned counsel further submitted that



the Tribunal had not awarded any compensation under the head “Pain and Suffering” and prayed for enhancement of the compensation awarded by the Tribunal.

8. The first respondent remained *ex-parte* before the Tribunal. Hence, the learned counsel prayed that notice to the first respondent may be dispensed with 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 P.W.2 was not the Doctor who treated the appellant and the Tribunal had rightly rejected the Disability Certificate issued by him. In the absence of any acceptable evidence, the Tribunal was right in rejecting the Disability Certificate issued by P.W.2 and therefore, the award does not call for any interference and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant 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 instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12. It is seen from Ex.P.1-Accident Register, that the appellant had suffered Proximal Tibia Fracture. P.W.2, who had examined the appellant had confirmed that the appellant had suffered fracture of Proximal TIBIA. The Doctor's certificate, corroborated the version in the Accident Register. P.W.2, a private Doctor was not the Doctor who treated the appellant. The appellant was not examined by the Medical Board. However, considering the nature of injuries, this Court is of the view that it would be just and reasonable to fix the Disability as 15%. Since, the accident is of the year 2020, the appellant would be entitled to Rs. 7,000/- per percentage of disability. Therefore, the compensation under the head “Disability” has to be fixed at $\text{Rs.7,000/-} \times 15$ (15% of disability) = Rs.1,05,000/-. The compensation under the head “Medical expenses” is confirmed.

13. On perusal of the award of the Tribunal, it is seen that the Tribunal has not awarded compensation under the heads “Transport expenses”, “Pain and suffering” and “Extra nourishment”. Considering the facts and



circumstances of this case, this Court is of the view that it would be just and reasonable to grant Rs.5,000/- under the head “Transport expenses”, Rs.5,000/- under the head “Extra nourishment” and Rs.10,000/- under the head “Pain and suffering”.

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

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	40,000	1,05,000	Enhanced
2	Medical expenses	1,693	1,693	Confirmed
2.	Transport expenses	---	5,000	Granted
3.	Pain and suffering	---	10,000	Granted
4.	Extra nourishment	---	5,000	Granted
	Total	Rs.41,693/-	Rs.1,26,693/-	Enhanced by Rs.85,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.41,693/- is hereby enhanced to Rs.1,26,693/- 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 appellant is 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. No costs.

12.09.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

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To

1.The Special Sub Court - I,
Motor Accident Claims Tribunal/
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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