



WEB COPY



C.M.A.No.3061 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3061 of 2017

and

C.M.P.No.21277 of 2018

D.Bharath

... Appellant
vs.

1.M.Kasthuri

2.Reliance General Insurance Co. Ltd.,
Motor Third Party Cell,
Rai's Tower's Plot No.2054,
II Avenue, II Floor,
Anna Nagar,
Chennai – 600 040.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation from Rs.1,31,000/- for a further sum of Rs.2,00,000/- (as restricted to by the appellant with higher rate of interest in M.C.O.P.No.5450 of 2013 on the file of Motor Accident Claims Tribunal, Chennai (in the IV Court of Small Causes, Chennai)

For Appellant : Mr.S.Vijayakumar

For R1 : No appearance

For R2 : Mr.V.Bharathidasan for
Mr.S.Arunkumar



C.M.A.No.3061 of 2017

* * * * *

J U D G M E N T

WEB COPY

This appeal has been filed by the appellant to enhance the compensation from Rs.1,31,000/- for a further sum of Rs.2,00,000/- (as restricted to by the appellant with higher rate of interest in M.C.O.P.No.5450 of 2013 on the file of Motor Accident Claims Tribunal, Chennai (in the IV Court of Small Causes, Chennai).

2.It is the case of the appellant that on 08.11.2012 at about 19.30 hours, when the petitioner was travelled as a pillion rider in a bike bearing Registration No.TN-22-AR-9929 from Padappai to Karasangal, at that time, on the way opposite to Infac Company, a car bearing Registration No.TN-05-AB-6130 came from back side which was driven by its driver in a rash and negligent manner and dashed against the petitioner and caused grievous injuries. The first respondent as the owner and the second respondent as the insurance company are vicariously liable to pay compensation, hence the petitioner is claiming total compensation of rs.5,00,000/- from the respondents under various heads. Hence, the petitioner/appellant herein had



C.M.A.No.3061 of 2017

preferred the claim petition before the Tribunal.

WEB COPY

3.The first respondent remained exparte in this case. The second respondent had denied the age, occupation and monthly income of the petitioner/appellant. Further he has denied the manner of accident and injuries sustained by the petitioner/appellant. Due to the rash and negligent act of the motorcycle bearing Registration No.TN-22-AR-9929 on whose vehicle the petitioner/appellant was riding as a pillion rider who was solely responsible for the said accident. The injury and the disability are being exaggerated to claim compensation. Without valid policy proof the second respondent is not liable to indemnify the first respondent for the loss arising out of the accident. The second respondent reserves its right to contest the case on all grounds under Section 170 of MV Act and stated that the petitioner/appellant is not entitled for any compensation and requests for the dismissal of the claim petition.

3.The Tribunal, after framing issues and recording evidence, has fastened the liability on the respondent/Transport Corporation and ultimately quantified the compensation in the following manner:-



C.M.A.No.3061 of 2017

WEB COPY

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	Disability	Rs.75,000/-
2.	Pain and suffering	Rs.25,000/-
3.	Extra Nourishment	Rs. 2,500/-
4.	Transport to Hospital	Rs. 2,500/-
5.	Damages to Clothes	Rs. 500/-
6.	Attender charges	Rs. 1,000/-
7.	Medical expenses	Rs.12,776/-
8.	Future Medical Expenses	Rs. 2,500/-
9.	Loss of Income	Rs. 6,500/-
10.	Loss of Amenities	Rs. 2,500/-
	Total	Rs.1,30,776/- rounded off to Rs.1,31,000/-

4.Heard the learned counsel for the appellant and learned counsel for the second respondent and perused the materials available on record.

5.The learned counsel for the appellant has submitted that the Tribunal did not take note of the factum that the evidence let in on the side of the appellant stood proved in the absence of any rebuttal on the side of



C.M.A.No.3061 of 2017

the respondents. The award passed by the Tribunal was not in conformity with in the eye of law. The Tribunal failed to consider that the evidence of PW1 to PW3 in total and ought to have held that the case of the appellant/claimant stood proved by virtue of Exhibits P1-P15. The Tribunal has not assigned any proper reasons for non consideration of the material evidences before it. The Tribunal has also erred in awarding only a sum of Rs.25,000/- towards pain and sufferings as against the claim of Rs.50,000/-. Even though initially, the learned Judge has observed that mental agony and torture may also be taken into account along with this head. The learned Judge has also grossly erred in not awarding the claim of Rs.50,000/- towards loss of earning power having the appellant lost his complete earning capacity.

6.The learned counsel for the appellant further submitted that the learned Judge has also erred in awarding only a sum of Rs.75,000/- as against the claim of Rs.2,00,000/- towards continuing permanent disability, especially when the disability were assessed at 30% and 40% as stated by PW2 and PW3 without properly appreciating the injury and disability



C.M.A.No.3061 of 2017

sustained by the appellant at the age of 21 itself. The Tribunal has erred in taking into account the monthly income of the appellant at Rs.6,500/- per month instead of Rs.15,000/- per month and that too calculating the loss of income only for a period of one month during the period of treatment who was inpatient, without taking into account the deformities and difficulties that has been undergone by the appellant and then awarding only a sum of Rs.6,500/- as against the claim of Rs.90,000/- towards loss occurred during the treatment period. The Tribunal further grossly erred in awarding only a sum of Rs.12,776/- as against the claim of Rs.1,08,983/- towards medical expenses to the tune of medical bills produced without taking into account the medical expenses that are madder during the exigencies and also in emergency situation for which it is practically impossible to produce the bills. As such, the learned Judge ought to have allowed the claim of Rs.1,08,983/- as prayed as per Ex.P5 for instead of the amount awarded. The Tribunal has erred in awarding only a sum of Rs.1,31,000/- as against the claim of Rs.5,00,000/- with lesser rate of interest. Hence, he prays to enhance the award of the Tribunal by allowing this appeal.



C.M.A.No.3061 of 2017

7.Per contra, the learned counsel for the second respondent/Insurance company has submitted that the Tribunal has taken each and every aspect into consideration and has awarded the just compensation which does not require any interference by this Court; in fact, the Tribunal has taken note of the evidence and documents on record and ultimately arrived at the compensation, which is perfectly valid in the eye of law. Hence, he prays for dismissal of the appeal.

8.On the side of the petitioner/appellant herein, two witnesses were examined as PW1 to PW3 and fifteen exhibits were marked as Ex.P1 to Ex.P15. On the side of the respondents no witnesses were examined and no documents were marked.

9.On a perusal of the award of the Tribunal would go to show that the Tribunal has analysed the evidences and documents such as Ex.P1, Ex.P2, Ex.P4 to Ex.P6, Ex.P13 to Ex.P15 and arrived at a conclusion that the accident was due to rash and negligent driving of the driver i.e. the first respondent. The disability assessed by the Doctor not assessed to the whole



C.M.A.No.3061 of 2017

body. The Tribunal had fixed the reasonable disability percentage as 25%

being no fault on his part, the petitioner had sustained injuries in the accident. The Tribunal had granted compensation under the heads of pain and suffering, extra nourishment, transportation, damages to clothes, attender charges, loss of income, loss of amenities, future medical expenses. The petitioner/appellant has not filed the original final bill and the Tribunal cannot consider the inpatient bill in detail, remaining bills calculated around to Rs.12,776/- towards medical expenses. The first respondent is the owner of the accident vehicle. The second respondent is the insurer of the accident vehicle. Since the first respondent remained exparte, the second respondent contested the case. There is no dispute regarding the coverage of insurance on the date of accident. The second respondent raised a defence that the rider of the motorcycle in which the petitioner was travelled as a pillion rider was responsible for the accident but the second respondent failed to prove the same. At the time of accident, there was an insurance coverage. Therefore, being the insurer of the vehicle, the second respondent is liable to pay compensation to the petitioner. According to the learned counsel for the petitioner, the compensation awarded by the Tribunal is very low, so that it



C.M.A.No.3061 of 2017

has to be enhanced the disability, pain and suffering, transport, damages to clothes, loss of income and loss of amenities.

10. Taking note of the above submissions of the learned counsel for the appellant and economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of the considered view that that it would be appropriate to award a sum of Rs.35,000/- towards pain and suffering, to fix disability at 30% and grant compensation at the rate of Rs.3000/- per percentage (30% x Rs.3000 = Rs.90,000/-), towards transport Rs.500/- is enhanced, towards damages to cloth Rs.1,500/- is enhanced, towards loss of income Rs.13,500/-.

11. The details of the modified compensation are as under:

<i>Sl. No.</i>	<i>Head</i>	<i>Amount awarded by the Tribunal in (Rs.)</i>	<i>Amount awarded by this Court in (Rs.)</i>
1.	Disability	Rs.75,000/-	Rs.90,000/-
2.	Pain and suffering	Rs.25,000/-	Rs.35,000/-
3.	Extra Nourishment	Rs. 2,500/-	Rs. 2,500/-
4.	Transport to Hospital	Rs. 2,500/-	Rs. 3,000/-
5.	Damages to Clothes	Rs. 500/-	Rs. 2,000/-



<i>Sl. No.</i>	<i>Head</i>	<i>Amount awarded by the Tribunal in (Rs.)</i>	<i>Amount awarded by this Court in (Rs.)</i>
6.	Attender charges	Rs. 1,000/-	Rs. 1,000/-
7.	Medical expenses	Rs.12,776/-	Rs.12,776/-
8.	Future Medical Expenses	Rs. 2,500/-	Rs. 2,500/-
9.	Loss of Income	Rs. 6,500/-	Rs.20,000/-
10.	Loss of Amenities	Rs. 2,500/-	Rs. 2,500/-
	Total	Rs.1,30,776/- rounded off to Rs.1,31,000/-	Rs.1,71,276/-

12.In the result, this Civil Miscellaneous Appeal filed by the claimant/appellant is partly allowed, by enhancing the total amount of compensation from Rs.1,31,000/- to Rs.1,71,276/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.5450 of 2013 on the file of Motor Accident Claims Tribunal, Chennai (in the IV Court of Small Causes, Chennai), within a period of eight weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary Court fees for the enhanced compensation



C.M.A.No.3061 of 2017

amount before receiving the copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. No costs.

09.02.2023

Index : yes/no
Internet : yes/no
ah

To

- 1.The Motor Accident Claims Tribunal,
Chennai (in the IV Court of Small Causes, Chennai)
- 2.Reliance General Insurance Co. Ltd.,
Motor Third Party Cell,
Rai's Tower's Plot No.2054,
II Avenue, II Floor,
Anna Nagar,
Chennai – 600 040.
- 3.The Section Officer,
V.R.Section,



High Court, Madras.

WEB COPY



C.M.A.No.3061 of 2017

A.A.NAKKIRAN.,J

ah



WEB COPY



C.M.A.No.3061 of 2017

C.M.A.No.3061 of 2017
and
C.M.P.No.21277 of 2018

09.02.2023