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C.M.A.No.1567 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1567 of 2023

Manoharan

... Appellant

Vs.

1.P.Sampath

2.ICICI Lombard General Insurance Co., Ltd.,

Arihant Plaza No.84 and 85,

I Floor, Wall Tax Road, Parrys Corner,

Chennai – 600 003.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.11.2021 in MACT.O.P.No.6984 of 2017 on the file of the Motor Accident Claims Tribunal, Court of Small Causes Court - II, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondents : Mr.R.V,Sivaraj for R2
Notice to R1 is dispensed with

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation awarded by the Tribunal in MACT.OP.No.6984



of 2017, dated 10.11.2021, on the file of the Motor Accident Claims Tribunal,
Court of Small Causes Court - II, Chennai.

2. The appellant had filed the claim petition stating that on 31.10.2017, at about 6.00 p.m. while he was trying to cross the road at Kottivakkam, Rajiv Gandhi Salai near IGP Bus Stop in front of Hotel Thuriya from East to West direction, a motorcycle bearing Registration No.TN-06-T-8080, insured with the second respondent herein came in a rash and negligent manner and dashed against him causing grievous injuries and hence, he was entitled to compensation.

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

4. The second respondent/Insurance Company resisted the claim petition stating that the rider of the two wheeler did not possess a valid license and that in any event the compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.



5. Before the Tribunal, the appellant examined himself as P.W.1 and marked twenty one documents as Exs.P1 to P21. On the side of the second respondent/Insurance Company neither oral nor documentary evidence was adduced. The certificate issued by the Medical Board was marked as Ex.C-1.

6. The Tribunal after considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent riding of the rider of the two wheeler and directed the second respondent, being the insurer of the offending vehicle, to pay a sum of Rs.6,81,894/- as compensation to the appellant. Aggrieved over the said award, the appellant has preferred the instant appeal.

7. The learned counsel for the appellant/claimant submitted that the Tribunal has not assessed the functional disability in an appropriate manner. Though the Medical Board has assessed the disability at 21 %, the Tribunal, considering the injuries and avocation, ought to have fixed a higher percentage for awarding compensation; the Tribunal erred in rejecting the Report of the Doctor Ex.P6, who treated the appellant and assessed the disability as 50%; and that considering the above facts, the Tribunal ought to have awarded more compensation and prayed for enhancement of the compensation awarded by the Tribunal.



8. The learned counsel for the appellant further submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, prayed 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 first respondent is dispensed with.

9. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the award of the Tribunal is just and reasonable and therefore, 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 appeal is whether the compensation awarded by the Tribunal is just and reasonable.



12. This Court on perusal of the evidence and the records, finds that there is no dispute with regard to the finding of negligence. The appellant was examined by the Medical Board which had assessed the permanent disability as 21%. The appellant suffered the following injury as per Ex.P3, Discharge Summary

“Grade-III compound fracture TIBIA left”

13. The appellant had marked Ex.P6, the certificate issued by the Doctor who had assessed the disability as 50%. However, it is seen that the said Doctor was not examined before the Tribunal. In the absence of his examination, the Tribunal was right in not accepting the disability certificate issued by the said doctor. The appellant had also not challenged the disability certificate issued by the Medical Board. Therefore, this Court is of the view that the Tribunal was right in fixing the functional disability as 21% based on Ex.C-1, disability certificate. The award under the other heads is also just and reasonable and therefore, no interference is called for in the award of the Tribunal. The monthly notional income fixed by the Tribunal, considering the age, avocation and the year of accident, is also just and reasonable and the same is confirmed.



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SUNDER MOHAN,J.

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