BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.174 and 1195 of 2018

C.M.A.(MD)No.174 of 2018:-

Xavier Arockiya Dass ... Appellant

Vs.

1.A.Malaichamy
2.Authorised Signatory,
M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
ATP Towers, 5th Floor,
12-A, Bye Pass Road,
Madurai – 625 010. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to modify the award passed in judgment and decree dated 13.12.2017 in M.C.O.P.No.958 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Madurai enhance the compensation to a sum of Rs.5,00,000/-.

For Appellant : Mr.K.Ravi

For R2 : Mr.S.Srinivasa Raghavan
For R1 : No Appearance

C.M.A.(MD)No.174 of 2018:-

Authorised Signatory,
M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
ATP Towers, 5th Floor,
12-A, Bye Pass Road,
Madurai – 625 010. ... Appellant

Vs.

1.Xavier Arockiya Dass
2.A.Malaichamy ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 13.12.2017 made in M.C.O.P.No.958 of 2015 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.K.Ravi
For R2 : No Appearance

COMMON JUDGMENT

C.M.A.(MD)No.174 of 2018 has been filed by the appellant/claimant, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal/Chief Judicial

Magistrate, Madurai in M.C.O.P.No.958 of 2015 dated 13.12.2017.

2.C.M.A.(MD)No.1195 of 2018 has been filed by the appellant/insurance company, challenging the medical bills on the basis of which, the medical expenditure has been awarded to the claimant and thereby, claiming to set aside the fair and decreetal order dated 13.12.2017 made in M.C.O.P.No.958 of 2015 on the file of the learned Motor Accident Claims Tribunal/Chief Judicial Magistrate, Madurai.

3.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.958 of 2015.

4.The factual matrix of the present case, briefly stated, are as under:-

On 24.02.2015 at about 08.00 p.m., while the petitioner was returning from Sivagangai in his two wheeler namely Hero Honda bearing registration No.TN-63-AA-9891 from west towards the east, the first respondent driving his Tata Ace bearing registration No.TN-63-H-7962 in a rash and negligent manner dashed against the petitioner/claimant's two wheeler near Sivagangai Government Veterinary Hospital, as a result of which, the petitioner/claimant fell down sustaining grievous hurt in his head, both hands, legs and across the body. Immediately he was taken to Sivagangai Government Hospital by his friend Selvaraj and further due to his serious condition, he was referred to Madurai Meenakshi Mission Hospital wherein he took treatment till 13.03.2015. On the date of the said accident, he was 44 years old and was serving as Headmaster drawing Rs.58,259/- as salary per month. That apart he also earned additional income of Rs.10,000/- by tuitions. Due to the grievous hurt in his nose, he had breathing difficulties and sleeplessness. The first respondent has insured his vehicle with the second respondent insurance company.

5.The injured claimant filed a claim petition in M.C.O.P.No.958 of 2015 under Section 166 of Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai, praying for a compensation of Rs.15,45,277/- along with interest from the date of accident till the date of realization.

6.Three witnesses were examined and 23 documents were marked on the side of the petitioner and five documents were marked as Court documents. No one was examined and no document was marked on the side of the respondents.

7.The first respondent was called exparte before the learned Tribunal. The Motor Accident Claims Tribunal after considering the evidence placed on record, fastened the liability on the second respondent to pay the compensation as awarded to the petitioner on behalf of the first respondent. It was further held that since the first respondent Tata Ace has been insured with the second respondent insurance company, the second respondent is entitled to pay entire compensation amount on behalf of the first respondent since the accident happened exclusively due to the rash and negligent driving of the first respondent. On the basis of the medical bills and various other materials available on record, the learned Tribunal awarded compensation to the petitioner as follows:-

Head	Compensation awarded
(I)Medical Bill: (as per Ex.P10,Ex.P11,Ex.P13, Ex.P14, Ex.P16, Ex.P17)	Rs.2,95,615/-
(ii)Pain and suffering:	Rs.40,000/-
(iii)Extra nourishment:	Rs.20,000/-
(iv)Transportation:	Rs.12,000/-
(v)Loss of Property:	Rs.2,000/-
(vi)Attendant charges:	Rs.24,000/-
(vii)Future Medical Expenses:	Rs.30,000/-
Total compensation awarded:	Rs.4,23,615/- with interest @ 7.5 % from the date of the claim until the realization and costs.

8.Challenging the said award, the petitioner has filed C.M.A.(MD)No.174 of 2018 for enhancement of the compensation. It is pertinent to mention here that the learned Tribunal has taken note of amount of Rs.1,08,101/-, which has been received by the petitioner/claimant from the Government under Mediclaim policy to which he had been a beneficiary and on that basis, the learned Tribunal had observed on the basis of Ex.P10 bills of Meenakshi Mission Hospital, the petitioner is entitled to receive only Rs.1,00,000/-. Despite the total amount of Ex.P10, bills of Meenakshi Mission Hospital was tune of Rs.2,08,l01/-, the compensation which has been received by the petitioner under Mediclaim Policy from the Government was deducted by the learned Tribunal. The learned Tribunal erred in deducting the said amount while calculating the compensation to be awarded under the head of medical bills, since the amount received by the petitioner/claimant from the Government under the Mediclaim policy is distinct and independent from the proceedings for compensation under the Motor Vehicles Act, 1988.

9.The learned Counsel appearing for the claimant submitted that this is a case of grievous injuries which resulted in (i) Fracture of both bone left forearm with right radius fracture, 2) DRUJ Disruption with Nasal Bone Fracture, 3) Injury in Right Forehead, 4) Multiple injuries all over the body, as a result of which, the claimant had undergone three surgeries and was hospitalised for a period of 31 days. The learned Tribunal has passed an award of Rs.4,23,615/- (Rupees Four Lakhs Twenty Three Thousand Six Hundred and Fifteen only). The Doctor who performed the surgery on the appellant, has deposed evidence as P.W.2 before the learned Tribunal and has elaborated the multiple injuries sustained by the claimant and the multiple surgeries performed on him to regain his health back to normalcy. While deposing his evidence, P.W.2 further stated that as the result of the injuries sustained by the claimant and the treatment given to him, he cannot drive any two wheeler any further.

10.The learned Counsel for the claimant vehemently submitted that the learned Tribunal failed to take into account the evidence deposed by P.W.2 explaining the current state of the claimant's arm. Hence, the claimant seeks for enhancement of award granted by the Tribunal. The learned counsel appearing for the claimant further submitted that the learned Tribunal gravely erred by taking into account the amount of Rs.1,80,101/- (Rupees One Lakh Eighty Thousand One Hundred and One only) which was issued to the claimant under the Tamil Nadu Employees Medical Insurance Scheme. While calculating the compensation for the medical bills under the Motor Vehicles Act, the total medical expenses incurred at Meenakshi Mission hospital by the claimant was marked as Ex.P.10 and the amount of insurance cover granted by the Tamil Nadu Government to a tune of Rs.1,80,101/-

(Rupees One Lakh Eighty Thousand One Hundred and One only) was reduced by the learned Tribunal. Hence, while granting of award under Section 166 of the Motor Vehicles Act, the same shall not be deducted and it is pertinent to observe that any other insurance policy is a contract between the insurer and the insured, which is independent from the Motor Vehicles Claims Proceedings.

11.In view of the same, the learned Counsel appearing for the claimant pressed for enhancement on the compensation of Medical Bills. That apart, he insisted that nothing has been awarded by the Tribunal towards loss of amenities. The amount fixed for pain and sufferings to a tune of Rs.40,000/- (Rupees Forty Thousand only) is extremely less, when calculating the sufferings undergone by the claimant for a period of 31 days, during the treatment of three critical surgeries. That apart, for medical attendance for a period of 31 days, very lesser amount of Rs.24,000/- (Rupees Twenty Four Thousand only) has been fixed by the learned Tribunal. Though the entire amount of future medical expenditure that has been calculated by the Tribunal is to a tune of Rs.80,000/- (Rupees Eighty Thousand only), the learned Tribunal has awarded only a meagre amount of Rs.30,000/- (Rupees Thirty Thousand only) which is marked as Ex.P.18. In view of the same, the learned counsel for the claimant pressed for enhancement on medical bills, award on loss of amenities, enhancement for pain and sufferings, attendance and future medical expenditure. He also relied upon the judgment passed by the *Hon'ble High court of Bombay in A.S.No.1051 of 2022 dated 12.04.2023, and the cases reported in 2023 ACJ 1288 dated 19.07.2022, 2017 ACJ 87 dated 04.11.2015, 2014 ACJ 1342 dated 03.12.2013 and 2011(2) T.A.C.810 (Kerala) dated 06.12.2010*, on the basis of which, he categorically submitted that the learned Tribunal ought not to have deducted the amount granted on medical bills in the insurance cover while calculating the award amount and pressed for enhancement of the award.

12.Per contra the learned counsel for the appellant/insurance company in C.M.A.(MD)No.1195 of 2018 vehemently submitted that no certificate as to the percentage of disability has been produced by the claimant and vehemently submitted that the grant of Rs.2,95,615/- towards medical expenses is far and excess of the amount to which, the petitioner is actually entitled to. However, the perusal of the materials would prove that the learned Tribunal has arrived at amount towards medical bills by taking into account Ex.B10, Ex.B11, Ex.B14, Ex.B16, Ex.B17 as Rs.2,95,615/- after deducting the amount of Rs.1,00,000/- received by the claimant under the Mediclaim Policy.

13.In view of the same, this Court is of the considered view that the learned Tribunal ought not to have deducted the said amount to which the petitioner is actually entitled to. It is a settled proportion of law that the amount received on Mediclaim Policy is not liable to be deducted under Motor Vehicles Act in the case of ***Reliance General Insurance Co. Ltd., v. Aman Sanjay Tak and Ors.*** reported in ***MANU/MH/2138/2023***, which is extracted as follows:-

> *"8. In my view, The father of claimant had taken insurance policy by paying separate premium for whole family. The contractual liability between father and other Insurance Company is different, than the contractual liability between driver and owner of offending vehicle and Appellant/Insurance Company. The owner of offending vehicle had paid premium of Insurance Policy. Both contractual liability cannot be put on equal footing. The Appellant/Insurance Company cannot claim*

deduction of the amount for which separate premium was paid by different person under different contractual liability. The Appellant/Insurance Company is liable to indemnify the contractual liability between them and owner of offending vehicle. So, the amount received under contractual liability is different amount of medical reimbursement, it cannot be deducted from the amount which the appellants are liable to pay as compensation."

14.Hence, this Court is of the considered view that the petitioner/claimant is entitled to total compensation of Rs.5,23,615/- by adding up an amount of Rs.1,00,000/-, which has been deducted by the learned Tribunal considering the amount disbursed by the Government to the petitioner/claimant under Mediclaim Policy.

15.The petitioner/claimant is entitled to a sum of Rs.5,23,615/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent/insurance company is directed to deposit Rs.5,23,615/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

16.In view of the same, C.M.A.(MD)No.174 of 2018 is partly allowed and C.M.A.(MD)No.1195 of 2018 is dismissed. There shall be no order as to costs.

22.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn
To
1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate), Madurai.
2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)Nos.174 and 1195 of 2018

22.12.2023