



C.M.A.(MD)No.1231 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.02.2023

Delivered On : 24.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1231 of 2013

S.Saravanakumar

.. Appellant

Vs.

1.Ramesh Babu
2.National Insurance Co. Ltd.,
Represented through its
The Divisional Manager,
No.3, North Veli Street,
Madurai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.07.2011 in M.C.O.P.No.2126 of 2008 on the file of the Motor Accidents Claims Tribunal Additional District Judge, Fast Track Court No.III, Madurai.

For Appellant	: Mr.M.Vivek Kumar
For 1 st Respondent	: Mr.S.Gokulraj
For 2 nd Respondent	: Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed



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in M.C.O.P.No.2126 of 2008 dated 22.07.2011, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Madurai.

2.The appellant herein is the petitioner and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.2126 of 2008, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 20.04.2008. The Tribunal has awarded a sum of Rs.52,200/- (Rupees Fifty Two Thousand and Two Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.2126 of 2008 is as follows:

On 20.04.2008 at about 03.00 p.m., when the petitioner was travelling as a pillion rider in a Hero Honda motorcycle bearing registration No.TN-58-Q-5317, the rider of the two wheeler drove the vehicle in a rash and negligent manner and dashed against another motorcycle bearing registration No.TN-59-T-4918. The petitioner sustained multiple injuries. He was taken to Thempavani hospital, Madurai. He sustained permanent disability and claimed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation.



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4. Brief substance of the counter filed by the respondents therein is as follows:

The rider of the two wheeler was not having valid driving licence. The first respondent did not pay any additional premium for pillion rider. The age, occupation and income of the petitioner are denied. The claim is excessive.

5. On the side of the petitioner, three witness were examined and nine documents were marked. On the side of the respondents therein, no witness was examined and no document was marked and one Court document was marked. After trial, the Tribunal has awarded a sum of Rs.52,200/- (Rupees Fifty Two Thousand and Two Hundred only) as compensation to be paid by the respondents. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of compensation on the following grounds:-

The medical expenditure was not taken into consideration by the Tribunal. The lower Court failed to consider the original medical bills that were marked as Ex.P6 and Ex.X1. The Tribunal ought to have fixed the monthly income as Rs. 6,000/- (Rupees Six Thousand only). Considering the fact that the petitioner is a Mechanic and that he was earning Rs.200/- (Rupees Two Hundred only) per day, the Tribunal has awarded only Rs.1,200/- (Rupees One Thousand and Two Hundred only) towards loss of income and the same is to be enhanced. The Tribunal ought to



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have awarded more amount towards permanent disability, pain and suffering and extra nourishment.

6.On the side of the appellant, it is stated that the accident has happened due to the rash and negligent driving of the rider of the two wheeler. The copy of the FIR was marked as Ex.P1, chargesheet was marked as Ex.P2 and MV1 was marked as Ex.P3. The copy of the judgment was marked as Ex.P5. The case sheet was marked as Ex.X1. Considering the evidence of P.W.1 and considering the fact that there is no rebuttal evidence on the side of the respondents, it is decided that the rider of the two wheeler, in which the appellant has travelled as pillion rider is responsible for the accident.

7.On the side of the appellant, it is stated that the medical bills are not considered by the Tribunal. Ex.P6 is the medical bills. On the side of the appellant, it is stated that the appellant took treatment as 'in patient' from 20.04.2008 till 01.05.2008. The case sheet was marked as Ex.X1. The appellant has undergone two surgeries and the medical bills are to be considered. Subsequent to the award, the petitioner has spent Rs.14,460/- (Rupees Fourteen Thousand Four Hundred and Sixty only) towards further medical treatment and hence, medical expenditure is to be awarded.



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8.On the side of the respondents, it is stated that the Tribunal has made a mentioning that the medical bills Ex.P6 are not original records and the discharge summary was not marked. Since the discharge summary was not marked, the Tribunal has rightly rejected the claim of medical bills.

9.A perusal of the records reveals that the appeal was dismissed for default and later it was restored after a lapse of five years. In the interregnum period, the lower Court has destroyed the records. The appellant is claiming Ex.P6 as the original medical bills. Considering the fact that the original bills are not available in the Court, it is decided that the appellant is entitled to claim medical charges and the appellant is entitled to Rs.64,673/- (Rupees Sixty Four Thousand Six Hundred and Seventy Three only) towards medical charges. Subsequent medical bills are not marked. Hence, this Court cannot consider the subsequent medical bills. The Tribunal has awarded Rs.46,000/- (Rupees Forty Six Thousand only) towards disability. The appellant sustained 46% disability and hence, the appellant is entitled to Rs.3,000/- per percentage of disability. The appellant is entitled to Rs.1,38,000/- (Rupees One Lakh and Thirty Eight Thousand only) for disability.

10.The Tribunal has awarded Rs.5,000/- towards pain and suffering, transportation and extra nourishment. The Tribunal has awarded Rs.1,200/- (Rupees One Thousand and Two Hundred only) towards temporary loss of income. The



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compensation awarded by the Tribunal under other heads is reasonable.

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11.The appellant herein is entitled to a sum of Rs.2,08,873/- (Rupees Two Lakh Eight Thousand Eight Hundred and Seventy Three only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

12.The respondents herein are directed to deposit Rs.2,08,873/- (Rupees Two Lakh Eight Thousand Eight Hundred and Seventy Three only)) 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 appellant herein is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. The appellant herein is directed to pay the additional Court fee for the enhanced amount. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
MRN



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To

- 1.The Motor Accidents Claims Tribunal, Additional District Judge,
Fast Track No.III, Madurai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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