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CMA NO.2884 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26 / 07 / 2024

JUDGMENT PRONOUNCED ON : 12 / 08 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.2884 OF 2021

V.Mohammed Yahya
S/o.Moideen Kutty

... Appellant / Petitioner

Versus

1.Louis Rakesh Karunakaran

2.The New India Assurance Co. Ltd.,
No.1090, Poonamallee High Road,
Periamet, Chennai – 600 084.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the appeal and enhance the amount awarded in M.C.O.P.No.4241 of 2014 dated 02.08.2019 on the file of Motor Accidents Claims Tribunal (II Small Causes Court) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent-2 : Mr.T.Jayaraman

J U D G M E N T

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This Civil Miscellaneous Appeal is directed against the Award dated August 2, 2019, passed in M.C.O.P.No.4241 of 2014 by the 'Motor Accidents Claims Tribunal (II Court of Small Causes) Chennai' [henceforth 'Tribunal']. The appellant herein is the petitioner before the Tribunal.

Petitioner's case

2.On March 31, 2014 at about 20.15 hours, while the petitioner was crossing Perambur Paper Mills Road from north to south, a Motorcycle, bearing Registration No.TN05-AR-9667, belonging to the first respondent, came in a rash and negligent manner from west to east, knocked down the petitioner. Due to the accident, the petitioner sustained grievous injuries. According to the petitioner, the accident had occurred due to the rash and negligent riding of the rider of the Motorcycle. The first respondent is the owner and second respondent is the insurer of the first respondent Motorcycle and hence, both are vicariously liable to pay compensation to the petitioner. Accordingly, the petitioner filed a claim petition claiming compensation of a

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sum of Rs.2,30,000/- from the respondents.

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1st Respondent's case

3.The first respondent, who is owner of the Motorcycle remained absent and accordingly, set *ex-parte* before the Tribunal.

2nd Respondent's case

4.The second respondent filed a counter wherein it has been stated that the petitioner alone carelessly crossed the road and fell down before the Motorcycle and invited the accident. Further, the age, occupation and monthly income of the petitioner including the manner of accident, have been denied. Accordingly, it prayed to dismiss the claim petition.

5.At trial, the petitioner was examined as P.W.1 and Dr.T.S.Kalkura was examined as P.W.2 and Ex-P.1 to Ex-P.11 were marked on the side of the petitioner. On the side of the respondents, neither witnesses



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were examined nor documents were marked.

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Findings of the Tribunal

6.The Tribunal, after considering the oral and documentary evidence, came to the conclusion that the accident had happened due to the rash and negligent riding of the rider of the first respondent's Motorcycle, which is insured with the second respondent and therefore, directed the second respondent/Insurance Company to pay a sum of Rs.1,17,500/- as compensation to the petitioner with interest at the rate of 7.5% per annum from the date of numbering of the petition till the date of realization and with costs.

7.Dissatisfied with the quantum of compensation, the appellant / petitioner filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

Arguments

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8.The learned counsel for the appellant / petitioner has submitted that the Tribunal failed to appreciate the evidence available on record; that due to the accident, the petitioner suffered *fracture of upper incisors deformity in lower jaw and elevation of lower teeth and nasal bone*. The Doctor assessed 40% disability as partial and permanent in nature. The Tribunal, without considering the same, has taken disability as 10%. Further, the Tribunal did not appreciate the evidence of P.W.2 and Ex-P.11 - Disability Certificate. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.

9.Per contra, learned counsel for the second respondent / Insurance Company would submit that Ex-P.11 - Disability Certificate was issued by a private Doctor. The petitioner did not take any steps to get Disability Certificate from the Medical Board. Hence, Ex-P.11 – Certificate cannot be considered as valid Disability Certificate. However, the Tribunal after considering the evidence of P.W.2 and Ex-P.11 – Certificate has come to the conclusion that the petitioner suffered 10% disability and accordingly, awarded a sum of Rs.3,000/- for per percentage of disability. There is no

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warrant to interfere with the said Award. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

10.This Court has considered the submissions made on either side and perused the materials available on record.

Discussion and Decision

11.The appellant / petitioner filed this Civil Miscellaneous Appeal seeking enhancement of compensation. The respondents have not filed any appeal / cross objection.

11.1.As far as negligence is concerned, the Tribunal, based on the evidence of P.W.1 and Ex-P.1 – FIR came to the conclusion that the first respondent's rider is responsible for the accident. This Court has no reason to deviate from the said findings of the Tribunal. The second respondent / Insurance Company has not preferred any appeal against the Award. Hence, as far as negligence is concerned, it reached finality and there is no need to



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delve into the matter. Further, immediately after the accident, the petitioner rushed to the Kilpauk Medical College and Hospital, Kilpauk, Chennai where the Doctor has noted the following injuries:

- “1.Upper incisors*
- 2.Deformity lower Jaw*
- 3.Elevation of Lower Incisor”*

Thereafter, the petitioner has taken treatment in AL-Shifa Hospital Pvt. Ltd., Malappuram, Kerala. There, he incurred a sum of Rs.38,404/- towards medical expenses. To substantiate the same, Medical Bills have been filed and marked as Ex-P.4.

11.2.To prove his disability, the petitioner examined P.W.2. Dr.T.S.Kalkura. P.W.2 has deposed that he examined the petitioner on March 31, 2014 and perused the original treatment records. On his examination along with medical records, P.W.2 assessed that the petitioner has suffered 40% partial permanent disability. To that effect, he issued Ex-P.11– Disability Certificate.



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11.3.The petitioner was initially admitted in Kilpauk Medical College and Hospital on March 31, 2014 and discharged on April 1, 2014. Thereafter, he was admitted in AL-Shifa Hospital Pvt. Ltd., Malappuram, Kerala on April 3, 2014 and underwent treatment for Fracture of Upper incisors deformity in lower jaw and elevation of lower teeth and nasal bone and discharged from the hospital on July 10, 2014. Hence, the Doctor assessed the petitioner's disability as 40% partial permanent in nature. The petitioner has not been subjected to medical examination by the Medical Board. However, the evidence of P.W.2 and Ex-P.11 cannot be rejected in toto. P.W.2 – Doctor has deposed that due to the injuries sustained, the petitioner has some difficulty in opening his mouth and taking food and also, he has some deformity in his face. The evidence of P.W.1 corroborates with the evidence of P.W.2 – Doctor. Hence, considering the nature of the injuries sustained, this Court opines that the petitioner has suffered 30% disability.

11.4.The accident occurred in the year 2014. Hence, a sum of Rs.4,000/- per percentage of disability would be just and reasonable.

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11.5.The Tribunal has rightly awarded compensation under the other heads and the same does not require any interference by this Court.

11.6.To sum up, this Court concludes that the petitioner is entitled to get enhanced compensation in the following manner:

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal Rs.</i>	<i>Re-quantified by this Court Rs.</i>	<i>Status</i>
1	Disability	30,000.00	1,20,000.00	Enhanced
2	Pain and Sufferings	15,000.00	15,000.00	Confirmed
3	Extra Nourishment	5,000.00	5,000.00	Confirmed
4	Transport to Hospital	3,000.00	3,000.00	Confirmed
5	Damages to clothes	500.00	500.00	Confirmed
6	Attender charges	1,000.00	1,000.00	Confirmed
7	Medical expenses	38,404.00	38,404.00	Confirmed
8	Future Medical expenses	7,500.00	7,500.00	Confirmed
9	Loss of Income	12,000.00	12,000.00	Confirmed
10	Loss of Amenities	5,000.00	5,000.00	Confirmed
	Total	1,17,404.00	2,07,404.00	Enhanced
	Rounded off	1,17,500.00	2,07,500.00	Enhanced

Accordingly, this Court comes to the conclusion that the petitioner is entitled to get enhanced compensation of Rs.2,07,500/- (Rupees Two Lakh Seven



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Thousand Five Hundred Only) from the second respondent.

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Conclusion

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by **the Tribunal viz., Rs.1,17,500/- is hereby enhanced to Rs.2,07,500/- (Rupees Two Lakh Seven Thousand Five Hundred Only)**. The second respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.2,07,500/- along with interest at the rate of 7.5% per annum from the date of numbering the petition till the date of deposit, less the amount if any, already deposited to the credit of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment. The petitioner is not entitled to get interest for the default period, if any. Upon such deposit, the petitioner is permitted to withdraw the same by making necessary application before the Tribunal. Insofar as the enhanced compensation is concerned, the deficit court fee, if any, shall be paid by the appellant within a period of four weeks from the date of receipt of a copy of

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this judgment. No costs.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

The II Judge
Motor Accident Claims Tribunal
(II Court of Small Causes)
Chennai.

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R.SAKTHIVEL, J.

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