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C.M.A.(MD)No.1184 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.1184 of 2022

and

C.M.P(MD)No.7826 of 2023

The Divisional Manager,
United India Insurance Company Ltd.,
Trichy. ... Appellant/Respondent No.2

Vs.

1.Francis Bastiyan ... 1st Respondent/Petitioner
2.Joseph Vincent ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 11.01.2022 passed in M.C.O.P.No.390 of 2008 on the file of the Motor Accidents Claims Tribunal (III Additional Sub Judge), Trichy.

For Appellant : Mr.I.Robert Chandrakumar

For R1 : Mr.A.Haja Mohideen



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award dated 11.01.2022 passed in M.C.O.P.No.390 of 2008 by the Motor Accident Claims Tribunal/III Additional Subordinate Court, Thiruchirappalli.

2. The 2nd respondent in M.C.O.P.No.390 of 2008 is the appellant herein.

3. The 1st respondent is the petitioner/claimant filed the claim petition in M.C.O.P.No.390 of 2008.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 390 of 2008 is adopted hereunder.

5) The brief facts of the case:

On 13.03.2005, the petitioner was travelling in the 1st respondent's car bearing registration number KA 04 MA 7002 from Coimbatore to Trichy. The car was driven by its driver in a rash and negligent manner and when it was coming in Kannampalayam Soolur near Ravuthar division road hit the wall of bridge and fell down. Due to impact, the



petitioner sustained multiple injuries and sustained fracture at C6, C7 neck bone and C2, C3, C4 and C5 bones and also fracture at head. He was admitted in KMC Hospital, Coimbatore and took treatment as inpatient from 13.03.2005 to 05.04.2005 and from 18.06.2005 to 25.07.2005 during the period he underwent a surgery. Thereafter, the petitioner was admitted in CMC, Vellore for further treatment and took from 25.07.2005 to 07.09.2005, 26.09.2005 to 29.09.2005, 24.10.2005 to 26.10.2005 and 22.02.2006 to 27.02.2006. Thereafter, he took treatment at Kulandai Yesu Hospital, Trichy. He spent Rs.15,00,000/- towards medical treatment. He was owner of certain firms at the time of accident and earned Rs.25,000/- p.m. and paid income tax. He is not able to do business as done earlier. Hence, the petitioner filed the claim petition seeking compensation of Rs.25,00,000/-.

6. The 1st respondent/owner of the car stated that his car was duly insured with the 2nd respondent and hence, the 2nd respondent/Insurance Company is liable to pay the compensation.

7. The 2nd respondent/Insurance Company objected the claim petition by contending that the accident was not taken place on the negligence of the driver of the car. It was an unavoidable accident. The



petitioner travelled in the car as impermissible passenger. He sustained simple injuries and the same was cured. He has no loss of earning. The petitioner filed the claim petition stating about medical treatment in exaggerate manner.

8. Before the Tribunal both side adduced oral and documentary evidence. After hearing both and after considering the evidences, the Tribunal has held that the accident took place on negligence of the driver of the 1st respondent car. The Tribunal has considered the medical treatment taken by the petitioner and arrived a total award of Rs.23,70,781/-. Aggrieved by the said award, the 2nd respondent has preferred this Civil Miscellaneous Appeal.

9. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

10. The learned counsel appearing for the appellant / 2nd respondent / Insurance Company has argued that the petitioner is 44 years old person. Though the petitioner stated that he was doing business, he has not produced any document to show his business. There is no



proof of avocation and there is no proof for loss of employment. The petitioner as P.W.1 has admitted in cross examination that he has not filed any document to show his avocation. The Tribunal arrived 30% disability and awarded compensation adopting multiplier method. When there is no sufficient document to show his earning, the Tribunal awarded loss of earning by taking notional income of Rs.10,000/- p.m. The Tribunal has to decide whether there is functional disability to avocation of injured and the Honourable Apex Court has issued guidelines to ascertain the permanent disability. The Tribunal has not followed the guidelines. Further, the petitioner has produced medical bills including photocopy of bills for Rs.5,39,073/- (Ex.X2). The petitioner might have claimed the same by producing the original bills. In the absence of original bills, the Tribunal ought not to have awarded the said amount towards medical expenses. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.

11. In support of his argument, the counsel for the appellant has relied on the following citations:

1) 2011 SAR (Civil) 90, wherein the Hon'ble Supreme Court held in paragraph No.10 as follows:



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“10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

2) 2012 (1) TN MAC 611 (DB), this Court held in paragraph

No.29 as follows:

“29. Therefore, the compensation cannot be assessed on functional disability. Therefore, the tribunal is wrong in fixing the monthly income at Rs.10,000/- and mechanically applying the multiplier theory. However, the claimant has suffered 70% permanent disability and 25% partial disability and therefore, we are of the considered



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view he is entitled for a compensation for such disability at the rate of Rs.3,000/- per percentage as on exceptional case.”

3) Judgment, dated 01.04.2021 passed by this Court in C.M.A.No. 3041 of 2017 in paragraph No.10 it is held as follows:

“10.The Tribunal disbelieved the medical bills as Ex.P.11 and Ex.P.12 on the ground that they are either photocopy or not from the hospital from which the claimant took treatment.....It is true that the claimant has not produced any contra evidence to disbelieve the presumption that the medical expenses were reimbursed under the medical insurance policy. That is the reason why he has not produced the original bills, but has produced only photocopy.....”.

4) Judgment, dated 06.01.2020 passed by this Court in C.M.A.No. 10 of 2010 in paragraph No.8 it is held as follows:

“8.The plea with regard to medical bills appears to be cursory and without application of minds the Tribunal has gone into the medical bills, Ex.A.7 series and rejected the claims under photocopies and accepted only the original bills.



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Therefore, there is no good reason to find fault with the quantum of compensation granted under the head medical expenses.”

12. Per contra, the learned counsel for the 1st respondent/claim petitioner has contended that the Tribunal has made elaborate discussion over the evidences adduced by both parties and citations relied by parties. The accident took place on 13.03.2005 and the petitioner sustained fracture in neck bones C6, C7 and C2, C3, C4 and C5 and also fracture at hip bone. The petitioner took treatment as inpatient for more than 116 days. The petitioner has marked his PAN card to show his avocation. The Tribunal arrived notional income of the petitioner as Rs.10,000/- and awarded compensation adopting multiplier theory considering the permanent disability sustained by the petitioner based on medical records. There is no infirmity in the award. The petitioner has produced true copy of medical bills as some of the bills were misplaced. Therefore, the compensation awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.

13. On hearing both and on perusal of records, it is clear that the accident took place upon the negligence of driver of the 1st respondent



car in which the petitioner was travelling as a passenger. There is no contra evidence adduced by the 2nd respondent, appellant herein.

On perusal of medical records, produced by the petitioner, it is clear that the petitioner sustained fracture in neck bone and hip bone ranging from C2 to C7. The petitioner states that three ribs were removed. The petitioner took treatment from the date of accident for more than 116 days as inpatient and underwent surgeries and he was in ailment more than 2 ½ years. The 2nd respondent/Appellant has not produced any contra evidence against the above. Therefore, the Tribunal considering the facts and circumstances of the case, based on the legal dictum laid down in Sarala Varma case and Pranay Sethi case, has correctly adopted the multiplier method. There is nothing wrong in it. At the time of accident, the petitioner's age is 44 years and it is not disputed. Though the petitioner claimed that he was doing business and marked PAN card, in the absence of any document, the Tribunal has fixed notional income of Rs.10,000/- p.m. which is not said to be excess one. The judgment of this Court made in 2012 (1) TN MAC 611 (DB), relied on by the appellant/Insurance Company, the claimant therein sustained only amputation of right leg below knee and therefore, Division Bench this Court reversed the multiplier. It is a settled principle that each and every case has to be decided upon appreciating evidences adduced in the



case. In this case, the petitioner sustained multiple fracture in neck bone and C.spine injuries. Therefore, the Tribunal has correctly awarded compensation adopting multiplier theory and also awarded compensation under various heads, except the award under medical bills. There is no necessity arisen to interfere with them.

14. As far as medical bills are concerned, the appellant/2nd respondent vehemently contended that the petitioner produced photocopy of bills as Ex.X2 for Rs.1,35,566/- and Rs.4,03,507/- in total for Rs.5,39,073/-. Considering the citations relied on by the appellant/2nd respondent, the photocopy of the medical bills could not be accepted in the absence of original bills. Though the petitioner examined doctors from the hospital and marked the medical bills, the petitioner has not properly explained for marking of photocopies of bills to the tune of Rs.5,39,073/- as rightly pointed out by the appellant/2nd respondent. Since the petitioner has not produced original medical bills, the contention of the appellant/2nd respondent that there is possibility that the claimant would get the sum of Rs.5,39,073/- reimbursed through medical insurance by producing the original medical bills cannot be brushed aside as there is no substance. In the above facts and



circumstances, the award passed by the Tribunal has to be interfered and the same has to be modified. Therefore, the award for a sum of Rs.5,39,073/- in respect of copies of medical bills – Ex.X2 is hereby ordered to be set aside. In respect of other medical bills, the award is hereby confirmed. In all other aspects, the award passed by the tribunal is confirmed.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award dated 11.01.2022 passed by Motor Accident Claims Tribunal / III Additional Sub Court, Thiruchirappalli in M.C.O.P.No.390 of 2008 is modified.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.23,70,781/- to Rs.18,31,708/- (Rupees Eighteen lakhs thirty one thousand seven hundred and eight only).

(iii) The petitioner/ first respondent herein is entitled to receive a sum of Rs.18,31,708/- with proportionate interests and costs.

(iv) The appellant/2nd respondent Insurance Company is directed to deposit the entire compensation amount of Rs.18,31,708/- (Rupees Eighteen lakhs thirty one thousand seven hundred and eight only), less the amount already deposited, together with interest at the rate of 7.5%



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per annum from the date of claim petition till the date of deposit and costs to the credit of M.C.O.P.No.390 of 2008 on the file of the Motor Accident Claims Tribunal/III Additional Sub Court, Thiruchirappalli within a period of six weeks from the date of receipt of a copy of this order. The excess amount, if any, already deposited by the appellant/Insurance Company shall be refunded to the appellant.

(v) On such deposit being made by the appellant/Insurance Company, the petitioner/claimant/1st respondent herein is permitted to withdraw the entire amount with interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. No costs. Consequently, connected Miscellaneous Petition is closed.

22.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The Motor Accidents Claims Tribunal
(III Additional Sub Judge),
Trichy.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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