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C.M.A.No.1552 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2023

PRONOUNCED ON : 20.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1552 of 2013

Kanagaraj

... Appellant/Petitioner

Vs.

1. Mohan Kumar

[R1 remained ex-parte before Tribunal.

Hence, notice to R1 dispensed with]

2. The Branch Manager,

Oriental Insurance Co., Ltd.,

No.14, Sankarapuram,

No.19/1, 1st Floor, 3rd Cross, Shankarapuram,

Bangalore – 560 004.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 22.01.2010 made in M.C.O.P.No.344 of 2008 on the file of the Motor Accidents Claims Tribunal, Court of Additional Subordinate Judge at Krishnagiri.



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For Appellant : Mr. M.Sriram
For R1 : Ex-parte before Tribunal
For R2 : Mr.D.Baskaran

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant in M.C.O.P.No.344 of 2008, aggrieved over the quantum of compensation awarded by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai, wherein, the Motor Accidents Claims Tribunal has awarded a sum of Rs.1,01,800/- as compensation for the injuries sustained by the claimant in the accident taken place on 18.07.2007.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. On 18.07.2007 at about 8.00 a.m., the claimant was riding his motorcycle bearing registration No.TN 29 4357 from Kaveripattinam to Kalvehalli to his house on KRP Dam Road, near Perumal Temple on the left side of the road, at that time, the driver of the Pickup Van, bearing



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registration No.KA 01/AB 8000 drove the same in a rash and negligent manner and dashed against the petitioner's motorcycle and due to the impact, the petitioner fell down and sustained fracture on his right knee and also sustained multiple injuries all over his body. A case was registered by the Kaveripattinam Police against the driver of the Pickup Van in Crime No.727/2007 under Sections 279, 337 IPC. Hence, the petitioner claimed compensation for a sum of Rs.5,00,000/-.

4. The first respondent - vehicle owner, remained ex-parte before the Tribunal. The second respondent is the Insurance Company countered that the accident was occurred only due to rash and negligent driving of the claimant and that the driver of the Pickup van is not responsible for the accident. They have also disputed the contributory negligence only on the part of the rider of the motorcycle and negligence injuries and disabilities caused to the petitioner and stated that compensation claimed before the Tribunal is on the higher side and prays to dismiss the Claim Petition.



5. Before the Tribunal, the claimant was examined as P.W.1 and one Dr.Ashok Kumar was examined as P.W.2 to prove the disability and claimant marked documents as Exs.A1 to A10 and on the side of the second respondent-Insurance Company no witness was examined and no documents marked.

6. Based on the evidence adduced before the Tribunal, it is held that from the evidence of the injured and since no rebuttal evidence adduced by the respondent side to disprove the evidence of the claimant, the rash and the negligent act of the driver of the private bus is responsible for the injuries caused to the claimant.

7. The Tribunal has awarded compensation on the following heads: Permanent Disability at Rs.40,000/-; Compensation of Pain and Sufferings and mental agony at Rs.10,000/-; Partial Loss of earning capacity at Rs.9,000/-; Transport to Hospital and Extra Nourishment at Rs.5,000/-; Medical Expenses at Rs.35,776.36/-; and Attendant Expenses at Rs.2,000/-.



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8. The claimant has filed this appeal on the grievance that the compensation awarded for the injuries and disabilities caused to him is on lower side and prays to increase the compensation.

9. The learned counsel for the appellant would submit that the claimant has suffered 40% injury and the Tribunal has followed the percentage method and granted Rs.1,000/- per percentage of injury sustained by him, which is on the lower side. Similarly, in other heads also the compensation granted needs to be revised.

10. The claimant herein has sustained the following injuries as stated in Ex.P9-Disability Certificate as follows: “இவருடைய வலது முட்டிகாலில் டிபயா எலும்பின் மேல் பகுதி உடைந்து அதற்காக அறுவை சிகிச்சை செய்யப்பட்டுள்ளது. அதனால் வலது முட்டிகாலின் சதைகள் இறுகி போய் உள்ளது. வலது முட்டிகாலை மடிப்பதிலும் நீட்டுவதிலும் சிரமம் மற்றும் வலி உள்ளது, வீக்கம் ஏற்படுகிறது. சரியாக சப்பனிட்டு அமர முடியவில்லை. குந்திகாலிட்டு அமர முடியவில்லை. காலில் ராடு மற்றும் ஸ்க்ரூ பொருத்தப்பட்டுள்ளதால் நடக்கும் பொழுதும் அன்றாட வேலைகளை செய்யும் பொழுதும் சிரமமாகவும் வலியும் இருக்கிறது. இதனால் இவரால் நீண்ட நேரம் நடக்கவோ, நிற்கவோ முடியாது.



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இவரால் சைக்கில் போன்ற இருசக்கர வாகனங்கள் ஓட்ட முடியாது. மேலும் இவரால்

மாடிப்படிக்களில் ஏறி இறங்க முடியாது. மேலும் வேகமாக நடக்கவும் அன்றாட

வேலைகளையும், விவசாய வேலைகளையும், பால் கறக்கும் வேலைகளையும்

செய்ய முடியாது.” The Doctor who was examined as D.W.2 has issued

Disability Certificate and deposed that the claimant has suffered fracture of right tibial Condyles on the right knee and he developed stiffness on the muscles on the right knee and difficult to bend and stretch his right leg. He has also listed out further complications of the injuries sustained by him.

11. The Tribunal after considering the evidence of P.W.2 and medical records has accepted the percentage fixed by the P.W.2 i.e., 40%. The claimant has not sustained any permanent functional disability in view of the injuries sustained by him by following the Judgements of the Hon'ble Apex Court in *Rajkumar vs. Ajaykumar* reported in **2011 1 SCC 343**. Since the injuries sustained by the claimant is not the functional permanent disability, granting of compensation by adopting percentage method is proper. The Tribunal has granted a sum of Rs.1,000/- per percentage of disability. Admittedly, the accident was occurred on 18.07.2007, and during that relevant period the Courts have adopted granting of Rs.2,000/- per



percentage of injury. Accordingly, I am inclined to enhance the compensation for a sum of Rs.2,000/- per percentage of disability. Accordingly, compensation awarded under the head permanent disability is enhanced to Rs.2,000/- per percentage and the appellant is entitled for a sum of Rs.80,000/- [Rs.2000 X 40% = Rs.80,000/-] under the head Permanent Disability.

12. The Tribunal has also granted compensation for a sum of Rs.10,000/- for pain and sufferings and mental agony and this Court finds that the same is fair and proper. The injured was admitted into the hospital and undergone in-patient treatment on 18.07.2007 and discharged on 23.07.2007 as per Ex.A4-Discharge Summary shows that the claimant was fitted with L-plates and screws on the right tibial Condyles. Considering the period of taking in-patient treatment, the Tribunal has awarded a sum of Rs.9,000/- as partial loss of earning during the treatment period and the same is confirmed. The Tribunal has awarded a sum of Rs.5,000/- for Transport to Hospital and Extra Nourishment and the same is on the lower side and this Court enhance the amount to Rs.10,000/- for transport to Hospital and Extra Nourishment. The Tribunal has allowed the entire



medical expenses of Rs.35,776.36/- and this Court is of the view that no need for further revision in this particular head. The Tribunal has awarded attendant charges for a sum of Rs.2,000/- but failed to grant future medical expenses. Admittedly, the claimant has fitted with L-plates, screws which requires to be removed, subsequently. Accordingly, I am inclined to award a sum of Rs.15,000/- under the head future medical expenses.

13. Accordingly, the award passed by the Tribunal under various heads are hereby enhanced is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent Disability	Rs.40,000/-	Rs.80,000/-	Enhanced
2.	Pain and sufferings and Mental Agony	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Partial loss of earning	Rs.9,000/-	Rs.9,000/-	Confirmed
4.	Transport to Hospital and Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
5.	Medical expenses	Rs.35,776.36/-	Rs.35,776.36/-	Confirmed
6.	Attendant Expenses	Rs.2,000/-	Rs.2,000/-	Confirmed



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7.	Future Medical Expenses		Rs.15,000/-	Granted
	Total	Rs.1,01,776.36/-	Rs.1,61,776.36/-	Enhanced by Rs.60,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,01,776.36/- is hereby enhanced to Rs.1,61,776.36/- [Rupees One Lakh Sixty One Thousand Seven Hundred and Seventy Six and Thirty Six Paise only] together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.344 of 2008, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Krishnagiri. On such deposit, the appellant/claimant is entitled to withdraw the amount, now awarded by this Court along with interest and costs, less the amount if any, already withdrawn without making any formal application. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects,



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the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

20.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K.RAJASEKAR,J.



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Pre delivery Judgment made in
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