

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.01.2017

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2640 of 2011

T.Pauldurai

.. Appellant/Claimant

Vs.

1. T.Ezhilarasan

2. United India Insurance Co. Ltd.,  
No.19, Andiappagrammi Street,  
Royapuram, Chennai-600 013. ..Respondents/Respondent

Prayer:- The Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.01.2011 made in MACT OP.No.2966 of 2005 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikkannu

R1 : Set Exparte

For R2 : Mr.S.K.Krishnamurthy

JUDGMENT

The claimant who suffered a fracture of his 5<sup>th</sup> metatarsal of his left foot when he was knocked by a motorcycle on 08.07.2005 has come forward with this appeal seeking enhancement of compensation. Before the Tribunal he claimed Rs.6,00,000/- whereas the Tribunal had awarded Rs.51,000/- payable with interest at 7.5% per annum.

2. The claimant was aged 40 years then and his avocation is essentially that of a door to door vendor of home made cleaning items. He was treated as an inpatient for a day and for his injury, the doctor assessed his disability at 20% whereas the Tribunal has determined it at 15% and at Rs.2,000/- per percentage of disability, it awarded a sum of Rs.30,000/- towards disability. For pain and suffering it awarded Rs.10,000/- and for loss of income for two months, it awarded Rs.6,000/-. It distributed the rest on other heads of non-pecuniary damages.

3. The learned counsel for the appellant submitted that the Tribunal ought not to have reduced the percentage of disability for the one that the doctor had determined. Secondly, it notionally fixed the income of the appellant at Rs.3000/- per month when he was actually earning more than Rs.6,000/-.

4. The respondent did not appear despite service of notice.

5. On perusal of the award, I do not find any major infirmity. However on the head of loss of income I fix the monthly income notionally at Rs.4,500/- and accordingly, the compensation payable on the head of loss of income would be Rs.9,000/- instead of Rs.6,000/-. In all, the compensation amount is increased from Rs.51,000/- to Rs.54,000/-. All other aspects are left undisturbed.

6. In the result, this appeal is partially allowed but without costs. The respondents are directed to deposit Rs.54,000/-, less if any amount already deposited, with interest at 7.5% per annum, within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same forthwith.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To

The II Judge,  
The Small Causes Court  
Motor Accidents Claims Tribunal,  
Chennai.

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KJI (CO)  
Eu 15.03.17