

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.46 of 2007

D.Raji

.. Appellant

Vs.

1.A.Anjaneyula Goud

2. The New India Assurance Company Limited,
No.46, Moore Street,
Chennai-600 001.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2006 made in M.A.C.T.O.P.No.4684 of 2003 on the file of the II Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.

For Appellant

: Mrs.V.Nalini

For R1

: Exparte

For R2

: Mr.M.Krishnamoorthy

JUDGMENT

In a road accident which took place on 27.02.2003, the appellant who was travelling in a motor cycle was hit by the lorry belonging to the 1st respondent and insured with the 2nd respondent. Aggrieved by the perceived inadequacy of the compensation awarded by the Tribunal, the claimant has preferred this appeal.

2. In the accident narrated above, the appellant suffered two compound fractures in the right femur besides some simple injuries to the other parts of the body. He was hospitalised for 16 days and incurred a medical expenses of Rs.40,000/-. Seeking a claim of Rs.3,00,000/-, he approached the Tribunal whereas, the Tribunal has passed an award of Rs.83,761/-. PW2, the Doctor has assessed the extent of disability of the appellant at 35%, whereas the Tribunal has reckoned it at 25% and assessed the compensation payable on the head of personal disability at Rs.1,000/- per percentage on disability. The award passed by the Tribunal on various heads are as follows:

<i>Heads</i>	<i>Amount awarded (Rs.)</i>
Towards Personal Disability	25,000.00
Towards Pain and Sufferings	10,000.00
Towards Medical Expenses	40,000.00
Loss of Medical Bills	6,761.00
Towards Nutrition	2,000.00
Total	83,761.00

3. The learned counsel for the appellant submitted that at the relevant time when the accident took place, the appellant/claimant was 25 years and was a JCB operator. He had suffered fractures to right femur besides some simple injuries to the other parts of the body. The evidence of PW2 proved that the appellant suffered 35% disability and he can no more continue his avocation as a JCB operator.

4. Per contra, the learned counsel for the 2nd respondent/Insurance Company has argued that the appellant has suffered fractures about the middle of his right femur and not at anywhere as the appellant claims. Hence, the nature of injuries never be treated as functional disability.

5. After rival submissions and perusing the materials, this Court is of the considered view that fixing the disability at 30% would be appropriate and noting by the 2003 standards, the compensation for personal disability is assessed at Rs.1,500/- per percentage of disability. Accordingly, the compensation on this head is enhanced from Rs.25,000/- to Rs.45,000/-. Further, the Tribunal has not awarded anything on the head of Trauma and the learned counsel submitted that necessary bills are produced for a total sum of Rs.11,000/- and the same is allowed. The compensation on other heads are marginally increased and the final break up of compensation is determined as follows:

<i>Heads</i>	<i>Amount awarded (Rs.)</i>
Towards Personal Disability	45,000.00
Towards Trauma	11,000.00
Towards Pain and Sufferings	10,000.00
Towards Medical Expenses	40,000.00
Loss of Medical Bills	6,761.00
Towards Nutrition	2,000.00
Total	1,14,761.00

6. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation is accordingly increased from Rs.83,761/- to 1,14,761/- and the 2nd

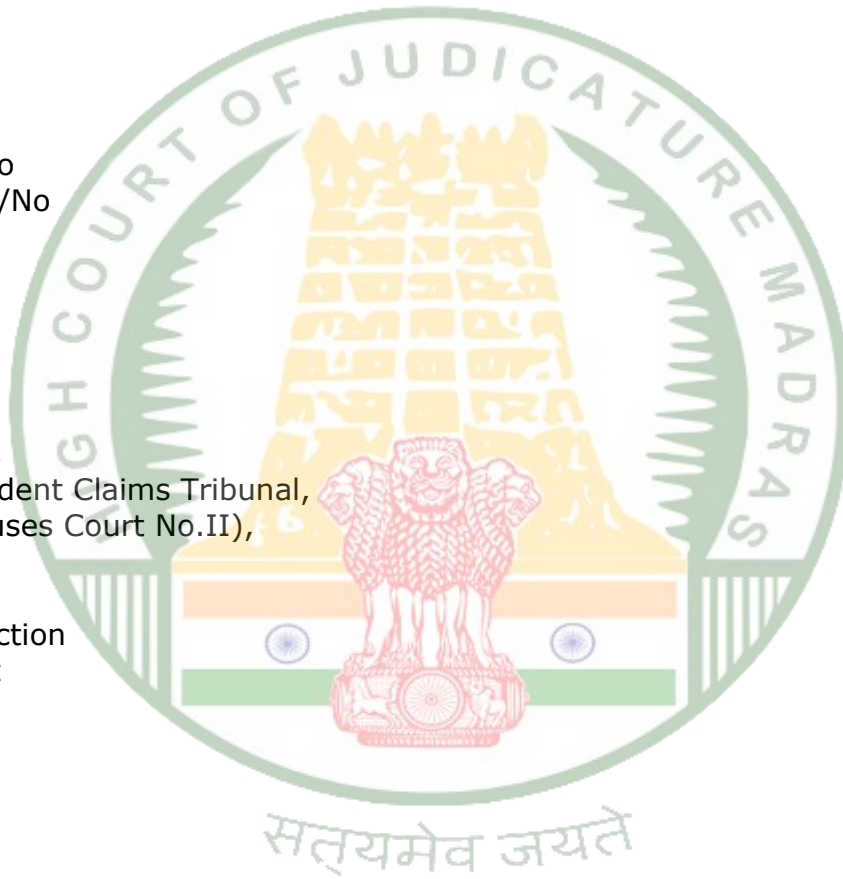
respondent is hereby directed to deposit the same, less the amount already deposited, if any, with interest at the rate of 7.5% p.a., within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the same forthwith. No costs.

27.10.2017

Index:Yes/No
Internet:Yes/No
ssn

To

- 1.The Judge,
Motor Accident Claims Tribunal,
(Small Causes Court No.II),
Chennai.
- 2.The VR Section
High Court
Madras.



WEB COPY

N.SESHASAYEE, J.,

ssn



C.M.A.No.46 of 2007

WEB COPY

27.10.2017