



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No. 354 of 2015

A.Senthil @ Kumarasamy

... Appellant

Vs.

1.P.Balaraman

2.M/s.United India Insurance Company Limited,
470, G.N.T. Road,
Red Hills,
Chennai-600 052.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicle Act, 1988 to set aside the judgment and award dated 02.12.2010 made in M.C.O.P.No.2935 of 2002 on the file of the Court of Additional District Judge/Fast Track Court No.2, Trichy insofar as awarding lesser compensation and consequently enhance the compensation.

For Appellant

: Mr.J.Maria Roseline

For Respondents

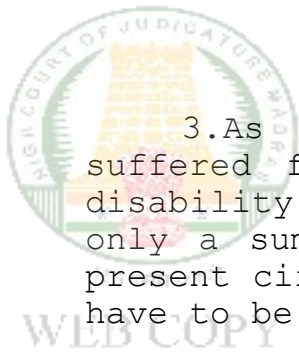
: R.1-Exparte

Mr.A.S.Mathialagan for R.2

JUDGMENT

The claimant has filed this appeal seeking enhancement of the compensation. The claimant was a pillion rider in the motor cycle bearing registration No.TN 45 N 5412 on 12.04.2002 at about 8:30 p.m in Trichy Madurai Main Road. The lorry belonging to the first respondent herein was coming in front and on account of applying of sudden brake the two-wheeler dashed against the lorry. The claimant suffered injuries in the accident. He filed M.C.O.P.No.2935 of 2002 and sought compensation for a sum of Rs.15,00,000/-. The Tribunal fastened the liability on both the lorry driver as well as the rider of the two-wheeler. There was a fastening of liability of 75% on the lorry driver and 25% on the rider of the two-wheeler.

2.The learned counsel for the appellant contented that this deduction of 25% is not justifiable. It is a case of two-wheeler hitting another vehicle from behind as the Tribunal rightly observed if the two-wheeler had maintained the safety distance, the accident could have been completely avoided. But because the appellant was a pillion rider, deduction could not be made as far as he is concerned.



3.As regards the quantum, it is seen that the claimant had suffered fracture in the fore head. The claimant had suffered disability to the tune of 45%. However, the Tribunal has awarded only a sum of Rs.1000/- per percentage of disability. In this present circumstances, the compensation payable to the claimant will have to be reworked as under:-

Sl.No	Heads	Amount in Rupees
1.	Permanent Disability 45% x 3000	Rs.1,35,000/-
2.	Medical Expenses	Rs.1,71,660/-
3.	Pain and Suffering	Rs.1,00,000/-
4.	Loss of Income	Rs.1,00,000/-
5.	Attendant Charges	Rs. 10,000/-
6.	Extra Nourishment	Rs. 20,000/-
7.	Loss of amenities	Rs.1,25,000/-
	Total	Rs.6,61,660/-

4.The Tribunal had awarded only a sum of Rs.1,17,525/-. The same is enhanced to Rs.6,61,660/-. The award passed by the Tribunal is accordingly modified. The second respondent insurance company is directed to deposit the entire award amount with 7.5 % interest from the date of petition till the date of realization along with costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. The appellant is directed to pay the Court fee for the enhanced amount within two weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount, less the amount already withdrawn by him, if any. Registry is directed to collect the Court fee for the enhanced amount for the appellant within two weeks from the date of receipt of a copy of this judgment. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed. The appellant is directed to pay the court fee for the enhanced amount within two weeks from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar



To

The Additional District Judge/
Fast Track Court No.2,
Trichy.

Copy to:-

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

+One cc to Mr.A.S.Mathialagan, Advocate, SR.No.83904

+One cc to M/s.J.Maria Roseline, Advocate, SR.No.83689

tsg

RL/5C/3P/SKN/RSK/SAR1/12/12/2017

C.M.A. (MD) No.354 of 2015

26.10.2017