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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3137 of 2010

Balakrishnan ... Appellant/Petitioner  
Versus

1.Selvapandy

2.Subramanian

3.The New India Assurance Co.Ltd.,  
Karaikal Rep. By Branch Manager,  
149, Bharathiyar Road,  
Karaikal.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Fair and Decreetal Order of the Motor Accident Claims Tribunal (Additional District Judge, Puducherry) at Karaikal dated 21.08.2009 made in M.A.C.T.O.P.No.71 of 2008.

For Appellant : Mr.S.Sounthar

For Respondents : R2 - No Appearance

: R1 - Not ready in notice.

: Mrs.Elveera Ravindran  
for Mr.S.Manohar (for R3)

#### J U D G M E N T

Seeking enhancement of compensation, the claimant has filed this appeal.

2.1.The brief facts of the case are as follows:-

On 19.02.2008, at 09.45 hours, when the claimant was crossing the Bharathiar Road, Thalatheru near the Karaikal Cooperative Milk Supply Society by walk from West to East, the Kinetic Honda ZX Zoom Motorcycle bearing Registration No.PY-02-B-6808, belonging to the 2<sup>nd</sup> respondent, which was driven by the 1<sup>st</sup> respondent from North to South on the same direction hit



against the claimant in rash and negligent manner. As a result of the said collusion, the appellant fell down and sustained fracture on his left leg below the knee joint, apart from sustaining various other injuries.

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2.2.The claimant was immediately taken to the Government Hospital, Karaikal, where he underwent treatment from 19.02.2008 to 03.03.2008. Thereafter, he took treatment in private hospital. Despite taking such treatment, the claimant could not recover fully. Under such circumstances, the appellant/claimant has filed the claim petition, seeking compensation of Rs.3,00,000/-, specifically, pleading that he was earning a sum of Rs.6,000/- per month working as a watchman in M.M.V.Kalyana Mandabam.

3.Before the Tribunal, the first respondent was set ex-parte. The second respondent is the owner of the offending vehicle.

4.The third respondent, which is the insurer of the vehicle, resisted the claim petition, contending that the second respondent is not the owner of the vehicle and the second respondent is not sure as to who is the owner of the vehicle. That apart, the Insurance Company also denied the age, avocation and income of the claimant and prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimant, three witnesses were examined as PW.1 to PW.3 and eleven documents were marked as Ex.P1 to Ex.P11. On the side of the respondents, no oral evidence was let in and no document was marked.

6.The Tribunal, after considering the evidence on record both oral and documentary, awarded compensation of Rs.25,000/- with accrued interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

7.The learned counsel for the appellant/claimant submitted that the Tribunal has not granted any sum towards loss of amenities, expenses towards medical treatment, expenses towards nutrition, attendant expenses and loss of income during treatment period. He further submitted that when the Government Doctor/PW.2 fixed the disability at 30%, the Tribunal was not justified in disbelieving the same and awarding a meagre sum of Rs.25,000/-, more so, when no contra evidence was let in by the respondents.

8.The learned counsel appearing for the Insurance company reiterated the reasons that weighed with the Tribunal and prayed for dismissal of the appeal.



9.I have heard the learned counsel on either side and perused the documents available on record and award passed by the Tribunal.

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10.The manner of the accident is not disputed. The only question that has to be considered in the appeal is regarding the quantum of compensation to be awarded to the appellant/claimant. It is not in dispute that the Government doctor issued the disability certificate, to the effect that the appellant/claimant suffered 30% disability. No contra evidence was let in, to show that the said certificate is fraudulent. Moreover, the accident is not in dispute.

11.Considering the Accident Register/Ex.P5, Original discharge slip/Ex.P6, Original disability certificate/Ex.P8, this Court is of the considered view that a sum of Rs.30,000/- has to be awarded towards disability. This Court also find that the Tribunal did not award any amount towards Pain and suffering, Transport charges, Extra-nourishment, Attender charges and Loss of amenities. Therefore, this Court feels it expedient to award a sum of Rs.10,000/- towards pain and suffering; a sum of Rs.10,000/- towards Transportation; a sum of Rs.6,000/- towards Extra-nourishment; a sum of Rs.6,000/- towards Attender charges and a sum of Rs.6,000/- towards Loss of amenities as compensation.

12.With regard to the loss of income, it is the specific case of the appellant that he was earning a sum of Rs.6,000/- per month. It is also evident from Ex.P7/Salary certificate produced by him, which is corroborated with the evidence of PW.3/Vinu that the appellant/claimant was earning of Rs.6,000/- per month. Considering the nature of the injuries, the appellant could have been under treatment for at least four months. On that basis, the loss of income would come to Rs.24,000/- (Rs.6000 x 4). In view of the above findings, the award of the Tribunal is modified as under:-

| Description        | Amount awarded by Tribunal | Amount awarded by this Court |
|--------------------|----------------------------|------------------------------|
| Disability         | Rs.25,000/-                | Rs.30,000/-                  |
| Pain and suffering | -                          | Rs.10,000/-                  |
| Transportation     | -                          | Rs.10,000/-                  |
| Extra nourishment  | -                          | Rs.6,000/-                   |



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|                   |             |             |
|-------------------|-------------|-------------|
| Attender charges  | -           | Rs.6,000/-  |
| Loss of income    | -           | Rs.24,000/- |
| Loss of amenities | -           | Rs.6,000/-  |
| Total             | Rs.25,000/- | Rs.92,000/- |

13.In the result, this Civil Miscellaneous Appeal is partly allowed.

(i) The compensation amount of Rs.25,000/- awarded by the Tribunal is hereby enhanced to Rs.92,000/-, along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) The third respondent/Insurance company is liable to pay the compensation amount of Rs.92,000/- to the appellant/claimant, together with interest of 7.5%, within a period of eight weeks from the date of receipt of copy of this Judgment.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount, as determined in this appeal, with accrued interest.

(iv) The appellant is directed to pay additional Court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klr

To

1.The Motor Accidents Claims Tribunal,  
Additional District Judge, Puduchery, Karaikal.

2. The Section Officer,  
V.R. Section, High Court, Madras - 104.

+lcc to Mr.S.Sounthar, Advocate Sr.29414

+lcc to Mr.S.Manohar, Advocate Sr.29322

C.M.A.No.3137 of 2010

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