

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2486 of 2011

M.Siva

.. Appellant

Vs.

1.C.Chethanraj

2.HDFC General Insurance Company Limited,
Rep.by its Branch Manager,
Branch Office, 6th Floor,
Leela Business Park,
Antheri Kurla Road,
Antheri (E), Mumbai - 400 059

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act, 1988 aggrieved by the
Award and Decree dated 23.06.2010 made in M.C.O.P.No.744 of 2008
on the file of the Motor Vehicle Claims Tribunal/Additional
Subordinate Judge, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan

For R1 : No appearance

For R2 : Mr.N.Vijayaraghavan

JUDGMENT

The claimant is the appellant herein seeking enhancement
of compensation.

2. This Civil Miscellaneous Petition has been filed
aggrieved by the Award and Decree dated 23.06.2010 made in
M.C.O.P.No.744 of 2008 on the file of the Motor Vehicle Claims
Tribunal/Additional Subordinate Judge, Krishnagiri.

3. On 03.05.2008, the appellant/claimant was proceeding in his Hero Honda Splendor Motor cycle bearing Registration No.TN 24 C.2757 slowly, cautiously on the left side of the road. The appellant/claimant was proceeding on the Gehenna to Krishnagiri National Highways road and when he neared the milk dairy fly-over bridge road to take the Mathur Road at about 3.30 p.m a Fiesta Car bearing Registration No.TN 01 AA 5207 belonging to the first respondent and insured with the second respondent was driven by its driver in a rash and negligent manner at high speed and was coming from Chennai towards Krishnagiri and suddenly the driver of the car lost control of the same and hit the Motor Cycle. Due to the impact, the appellant/claimant sustained multiple injuries all over his body.

4. P.W.2 -Doctor in his evidence has deposed that he issued the disability certificate-Ex.A9 to the appellant/claimant. After going through his previous medical records and after taking treatment X-rays Ex.P7 and Ex.P8 and after physically examining him and has given the disability as 60%. Though P.W.2 has given the disability as 60% yet he has not stated about the formula which was used by him as stated in his evidence. Further he has not produced the working sheet for the assessment of disability.

5. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.1,00,000/- with interest at 6% per annum.

6. Heard both sides.

7. From the evidence of P.W.2-Doctor had issued the Ex.P9-Disability Certificate. Based upon the Ex.P7 and Ex.P8-X-Rays, the Tribunal has held that it is only 20% disability has been awarded. However, after perusing the evidence of P.W.2, the injury had sustained three more injuries which has resulted in the fracture in his right Tibia and there was also mal union and restriction of bending and straightening of leg of the injured therein. The Doctor also evidenced that there was slight bending and shortening of leg and also above the incapacity of the appellant/claimant to walk fast and certified the disability as 60%. But, the Tribunal has fixed as disability 50%. Hence, the disability of 20% fixed by the trial Court has been enhanced to 30%. Accordingly, another Rs.20,000/- has been enhanced under the caption of continuing "permanent disability" and for "loss of amenities" Rs.10,000/- has been awarded and for "extra nourishment" in a separate head Rs.7,500/- has been awarded. No amount is awarded for 'Transport to hospital' separately. Thus, the award amount fixed by the tribunal has been enhanced from Rs.1,00,000/- to Rs.1,27,300/-.Hence, total compensation is

hereby enhanced to Rs.1,27,300/- from Rs.1,00,000/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Awarded by the Trial Court
Continuing permanent disability	Rs. 40,000/-
Pain and suffering	Rs. 20,000/-
Partial loss of earning	Rs. 15,000/-
Transport to hospital & extra nourishment	Rs. 10,000/-
Medical Expenses	Rs. 7,239/-
Stay of relatives in the hospital	Rs. 7,500/-
Total	Rs. 99,739/-
Rounded off	Rs.1,00,000/-

Heads	Award modified by the High Court
Continuing permanent disability	Rs. 60,000/-
Loss of amenities	Rs. 10,000/-
Extra Nourishment	Rs. 7,500/-
Pain and suffering	Rs. 20,000/-
Partial loss of earning	Rs. 15,000/-
Medical Expenses	Rs. 7,239/-
Stay of relatives in the hospital	Rs. 7,500/-
Total	Rs. 1,27,239/-
Rounded off	Rs. 1,27,300/-

8. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited and the Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment.

9. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

nvi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Motor Vehicle Claims Tribunal/
Additional Subordinate Judge,
Krishnagiri.

Copy to:-

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

+1cc to Mr.N.Vijayaraghavan, Advocate, SR.No. 11485

+1cc to Mr. Mukund R.Pandiyan, Advocate, SR.No. 10982

C.M.A.No.2486 of 2011

Kak(05/04/2019)

सत्यमेव जयते

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