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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2552 of 2011

S.Kalyan Sinha ... Appellant / Petitioner

Versus

1. L.Amaladoss

2. The New India Assurance Co., Ltd.,  
No.46, Moore Street,  
Chennai - 1.

... Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.07.2006 made in M.A.C.O.P.No.2992 of 2000 on the file of the II - Small Causes Court, Chennai / Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.K.R.Ponnusamy  
for M/s.Anand and Surya

For Respondents: Exparte before the Tribunal (for R1)  
: Mr. J. Chandran (for R2)

#### JUDGMENT

The claimant/appellant has preferred this Civil Miscellaneous Appeal for enhancement of compensation against the award and decree dated 21.07.2006 made in M.A.C.O.P.No.2992 of 2000 on the file of the II - Small Causes Court, Chennai / Motor Accident Claims Tribunal, Chennai.

2.The case of the appellant/claimant is that on 21.02.2000 by 08.15 hours, he was riding his motorcycle bearing Regn.No.TN-04-Y-7382, on Gandhi Nagar, 4th main road and at that time, an Autorickshaw bearing Reg.No.TN-07-B-2007 was coming on the opposite direction, was driven by its driver in a rash and negligent manner and hit the claimant's vehicle. In the impact, the claimant was thrown out of his vehicle as a result, he sustained multiple grievous injuries. For the injuries



sustained, the claimant filed the claim petition in M.A.C.O.P.No.2992 of 2000 before the Tribunal. The Tribunal awarded a total sum of Rs.1,25,135/-. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant filed the present appeal before this Court.

3.The learned counsel for the second respondent/ Insurance Company would justify the award passed by the Tribunal as the one which is proportionate to the nature of injuries sustained by the claimant and prayed for dismissal of this appeal.

4.According to the counsel for the appellant/claimant, even though the Doctor/PW2 assessed his disability at 45%, the Tribunal taken only 35% as disability without assigning any reason and awarded a sum of Rs.35,000/-. At the time of accident, the claimant was employed as Technical Manager in a Private company and earned Rs.4,500/- per month and by reason of the injuries sustained, the claimant could not attend to his duties for about 7 months, which could be evident from Ex's.P6 and P14. The claimant was treated as in patient and underwent surgery for the fracture injury suffered in his right thigh. However, the Tribunal awarded a mere Rs.15,000/- as loss of income for the period of treatment. Even for pain and suffering, the Tribunal awarded only Rs.10,000/- without regard to the nature of injuries sustained by the claimant and the period of his hospitalisation. Thus according to the claimant, the amount awarded by the Tribunal is grossly disproportionate to the nature of injuries sustained by the claimant and seeks for enhancement.

5. Heard both sides and perused the materials available on record.

6.In the accident occurred on 21.02.2000, the claimant sustained fracture on his right thigh, for which a surgery was done. The petitioner was admitted as an in-patient from 21.02.2000 to 28.02.2000 and continued his treatment thereafter. The Doctor, PW2 assessed the disability at 45%. However, the Tribunal had taken only 35% disability and awarded a sum of Rs.35,000/- which in the opinion of this Court is to be enhanced to Rs.45,000/- by taking the disability of the claimant at 45% as assessed by the Doctor/PW2.



7.The claimant has filed Ex.P6 and P14, Ex.P6/ salary slips to show that he was in receipt of Rs.4,500/- as salary per month. Admittedly, due to the injuries, the claimant could not attend to his employment atleast for 6 months and incurred loss of income. Therefore, the claimant is entitled to Rs.4,500/- for a period of six months, which works out to Rs.27,000/- for loss of income.

8.The Tribunal did not award any amount towards transportation to hospital and very meager amount for Extra Nourishment. Having regard to the nature of injuries sustained by the claimant, the claimant is entitled to a sum of Rs.15,000/- towards transportation and Rs.15,000/- towards Extra Nourishment. Similarly, for loss of amenities, the Tribunal did not award any amount and therefore, this Court award a sum of Rs.15,000/- towards loss of amenities.

9.The Tribunal has awarded a sum of Rs.2,000/- towards physiotherapy charges. In fact, the claimant has filed Ex.P4/ Physiotherapy bills, which shows that he had incurred expenses thereof. Therefore, this Court award a sum of Rs.9,000/- towards physiotherapy charges.

10.Thus, the claimant is entitled to a total sum of Rs.1,96,135/-. The break up details of the modified compensation amount are as follows:-

| Description           | Amount awarded by Tribunal | Amount awarded by this Court |
|-----------------------|----------------------------|------------------------------|
| Disability            | Rs.35,000/-                | Rs.45,000/-                  |
| Loss of income        | Rs.15,000/-                | Rs.27,000/-                  |
| Pain and Sufferings   | Rs.10,000/-                | Rs.10,000/-                  |
| Extra nourishment     | Rs.3,000/-                 | Rs.15,000/-                  |
| Physiotherapy charges | Rs.2,000/-                 | Rs.9,000/-                   |
| Medical expenses      | Rs.60,135/-                | Rs.60,135/-                  |
| Transportation        | -                          | Rs.15,000/-                  |
| Loss of Amenities     | -                          | Rs.15,000/-                  |
| Total                 | Rs.1,25,135/-              | Rs.1,96,135/-                |

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,25,135/- is hereby enhanced to Rs.1,96,135/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any,



within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-  
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

klt

To

1. The II - Small Causes Court, Chennai,  
Motor Accident Claims Tribunal, Chennai.

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

+1 cc to M/s.J.Chandran, Advocate, S.R.No.12451

+1 cc to M/s.Anand and Surya, Advocate, S.R.No.13556

CMA No.2552 of 2011

LN(CO)  
SSM(23/09/2019)