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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2207 of 2012

P.Rajkumar

...Appellant/Claimant

..Vs..

1.K.Krishnaraj

2.The Oriental Insurance Company Limited,
MTPC No.115, Broadway, II Floor,
Chennai-1

(The 1st respondent exparte before the
Tribunal)

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.04.2012, in M.C.O.P.No. 3431 of 2009, on the file of the Motor Accidents Claims Tribunal, [IIIrd Small Causes Court], Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R1 : Exparte before the Tribunal

For R2 : Mr.M.Krishnamoorthy

JUDGMENT

The appellant is the claimant in M.C.O.P.No.3431 of 2009 on the file of the Motor Accidents Claims Tribunal, IIIrd Small Causes Court, Chennai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident that took place on 14.04.2009.

2. The brief case of the appellant/claimant is as follows:

(i) The appellant/claimant was aged 18 years on the date of the accident. He was working as Mechanic earning a sum of Rs.6,000/- per month.

(ii) On 14.04.2009, at about 9.00 a.m., the appellant/



claimant was travelling as a pillion rider in the motorcycle bearing Registration No. TN 20 AK 1487 near Nelvoy bus stop at Vellore to Arni Road, a Tata Van bearing registration No. TN 23 B 8010 was driven by its driver in a very rash and negligent manner, came from the opposite direction and dashed against the appellant/claimant's motorcycle. Due to the said accident, the appellant/claimant sustained (i) fracture inter condyler region of right femur (ii) open fracture right lateral femoral condyle with patellar dislocation and injuries all over the body. Immediately, after the accident, the appellant/claimant was taken to Christian Medical College Hospital, Vellore.

3. The owner of the Tata Vpan bearing Registration No. TN 23 B 8010, was absent before the Tribunal, and therefore, he was set ex-parte. The Oriental Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 to PW3 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondents, no evidences were adduced. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.2,93,000/- together with interest at the rate of 7.5% per annum and directed the first and second respondents therein to jointly and severally pay the said compensation to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant has suffered (i) fracture inter condyler region of right femur (ii) open fracture right lateral femoral condyle with patellar dislocation and injuries all over the body. He would contend that the appellant/claimant was admitted on 14.04.2009 and discharged on 25.04.2009 for a period of 11 days. Further, he took continuous treatment at Christian Medical College, Vellore as an in-patient from 25.04.2009 to 30.04.2009 for a period of 5 days for type-III and he took continuous treatment in the very same hospital as in-patient from 27.07.2009 to 09.08.2009 for a period of 12 days. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

5. The learned counsel appearing for the Oriental Insurance Company Limited would contend that the appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous.

6. P.W.3-Doctor who had issued disability certificate for



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the claimant in M.C.O.P.No.3431 of 2009 under Exhibit P2. After perusing Exhibit P2-discharge summary and Exhibit P3-second discharge summary and Exhibit P4 subsequent discharge summary coupled with Exhibit P12-disability certificate issued by the Doctor-P.W.2, the disability is fixed at 70%. As under Exhibit P2 discharge summary issued by Government Medical College and Hospital, Vellore that the claimant was admitted on 14.04.2009 and discharged on 25.04.2009 for a period of 11 days. The claimant sustained fracture Inter condyler region of right femur. Further, as per Exhibit P3, he took continuous treatment at Christian Medical College, Vellore as in-patient from 25.04.2009 to 30.04.2009 for a period of 5 days for type-III, open fracture right lateral femoral condyle with patellar dislocation and as per Exhibit P4, he took continuous treatment in the very same hospital as in-patient from 27.07.2009 to 09.08.2009 for a period of 12 days.

7. Taking into consideration, the deposition of P.W.3-Doctor, the injuries sustained by the appellant/ claimant and also the surgery underwent by him, as could be seen from the medical bills (Ex.P5), this Court is of the considered opinion that, the disability sustained by the appellant/claimant should be fixed at 70%. Since, the accident is of the year 2012, awarding a sum of Rs.3,000/- per percentage of disability would meet the ends of justice as per decision reported in 2013 (2) TN MAC 583 [National Insurance Company Limited Vs.G.Ramesh and P.Yoshuva]. Accordingly, a sum of Rs.2,10,000/- is awarded towards 'permanent disability'.

8. Since, the appellant/claimant was admitted as an in-patient for 28 days in Government Medical College and Hospital, Vellore and since, he had also underwent a surgery, the sum of Rs.20,000/-and Rs.10,000/-granted by the Tribunal under the heads 'pain and sufferings' and 'extra nourishment' is enhanced to Rs.25,000/-and Rs.20,000/- respectively. A sum of Rs.10,000/- granted by the Tribunal under the head 'transportation' is enhanced to Rs.15,000/- Since, the appellant/claimant was admitted as an in-patient for 28 days, a sum of Rs.5,000/- is awarded by the Tribunal towards the 'attender's charges' is enhanced to Rs.15,000/-The Tribunal has not granted any amount towards 'loss of amenities' and therefore, a sum of Rs.20,000/- is awarded towards the same. Based upon the evidence of medical bills (Ex.P5), the Tribunal has granted a sum of Rs.40,000/- to the appellant/claimant towards 'medical expenses' and the same is hereby confirmed. With regard to 'loss of income', the Tribunal awarded Rs.6,000/- per month for a period of 3 months and the same is re-assessed at Rs.6,000/- per mensem for a period of six months and accordingly, Rs.36,000/- is awarded under the same. With regard to 'future medical expenses', the Tribunal awarded Rs.20,000/- and the same is

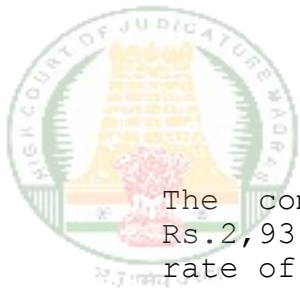


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enhanced to Rs.40,000/-under the same. The claimant has claimed compensation towards 'loss of earning power' and he has stated that the accident has adversely affected his earning power. Considering the nature of injuries, a sum of Rs.25,000/- is awarded towards 'loss of earning power' and the same shall stand vacated.

9. Accordingly, the award of the Tribunal in M.C.O.P.No.3431 of 2009 is modified as follows:-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability of 70% at the rate of Rs.2000/- per percent	Rs.1,40,000/-	Rs. 2,10,000/- (70% $\times$ Rs.3000/-)
2.	Loss of income for 3 months	Rs. 18,000/-	Rs. 36,000/- (Rs.6,000 $\times$ 6)
3.	Extra nourishment	Rs. 10,000/-	Rs. 20,000/-
4.	Medical expenses	Rs. 40,000/-	Rs. 40,000/-
5.	Future Medical Expenses	Rs. 20,000/-	Rs. 40,000/-
6.	Attender's charges	Rs. 5,000/-	Rs. 15,000/-
7.	Mental agony to the petitioner	Rs. 5,000/-	----
8.	Pain and sufferings	Rs. 20,000/-	Rs. 25,000/-
9.	Loss of earning power	Rs. 25,000/-	----
10.	Loss of amenities	---	Rs. 20,000/-
11.	Transportation	Rs. 10,000/-	Rs. 15,000/-
	Total	Rs.2,93,000/-	Rs.4,21,000/- -



The compensation awarded by the Tribunal is enhanced from Rs.2,93,000/- to Rs.4,21,000/- which shall carry interest at the rate of 7.5% per annum.

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10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,93,000/- to Rs.4,21,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent / Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.4,21,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 3431 of 2009 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai within a period of twelve weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same in the manner known to law.

s/d-

Assistant Registrar(CS-III)

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Sub-Assistant Registrar

To

1.The III Judge(Court of Small Causes)
The Motor Accidents Claims Tribunal,
Chennai.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 33842.

C.M.A.No.2207 of 2012

KS(CO)
SP(04/10/2019)