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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2251 of 2015

N.Sankar

... Appellant/Petitioner

Vs.

1.K.Gunasekaran

2.M/s.New India Assurance Co. Ltd.,
TP HUB Sethukrishna Trade Centre
No.133-31-A, Trichy Main Road, 2nd Floor
Near Rajasabari Theatre, Gugai,
Salem - 6.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.01.2015 made in M.C.O.P.No.966 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court -I, Salem.

For Appellant : Mr.T.Ananthasekar

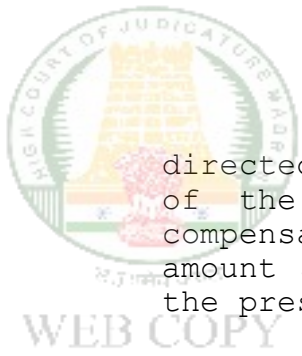
For R2 : Mr.S.Manohar

For R1 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 12.01.2015 made in M.C.O.P.No.966 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court -I, Salem.

2.The appellant is claimant in M.C.O.P.No.966 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court -I, Salem. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.04.2014. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and



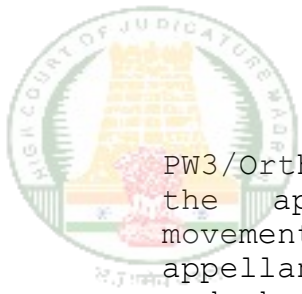
directed the 2nd respondent/Insurance Company being the insurer of the said motorcycle to pay a sum of Rs.2,25,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that PW2 Doctor assessed the disability of the appellant as 30% for the fracture of zygoma and maxilla and the PW3/Orthopedic surgeon has assessed the disability of the appellant as 29.16% for the fracture on the left clavicle bone. The total disability comes to 59.16%. The Tribunal without any basis reduced the same to 25%. If the Tribunal had any doubt with regard to percentage of disability assessed by the Doctors PW2 and PW3, the Tribunal ought to have referred the appellant to the Medical Board. PW3/Orthopedic surgeon has deposed that due to the disability, the appellant cannot continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of future earning capacity. The appellant has taken treatment in the hospital as in-patient and he suffered more pain. The Tribunal ought to have awarded more compensation towards pain & suffering, extra nourishment and transportation. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to cloth and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant suffered only one injury. The Tribunal considering the evidence of PW2 and PW3 Doctors and disability certificate, fixed the percentage of disability as 25% on the ground that the disability assessed by two Doctors is excessive. The appellant has not proved that he suffered functional disability and hence he is not entitled to compensation by adopting multiplier method. Further, the appellant has not produced the discharge summary to prove that he has taken continuous treatment in the hospital as in-patient. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has contended that he suffered fracture of zygoma and maxilla. PW2/Dentist in his evidence has deposed that due to the injuries suffered by the appellant, he would face difficulty in opening his mouth and chewing and certified the disability of the appellant as 30%.



PW3/Orthopedic surgeon in his evidence has deposed that the appellant sustained fracture on his left clavicle, movement of his left shoulder is restricted and the appellant would face difficulty in lifting heavy objects and he cannot do the work as he was doing earlier and certified the disability of the appellant at 29.16%. The 2nd respondent/Insurance Company objected the percentage of disability assessed by the Doctors PW2 & PW3. The Tribunal reduced the same to 25% on the ground that both the Doctors stated that they have not applied formula for arriving to combine the disability. The percentage of disability assessed by the Doctors is on the higher side and reducing the same to 25% by the Tribunal is also not correct. As rightly contended by the learned counsel appearing for the appellant that if the Tribunal had any doubt in the assessment of disability, the Tribunal ought to have referred the appellant to the Medical Board for assessing the disability. The Tribunal has adopted only percentage method for granting compensation towards disability. The Tribunal ought to have granted compensation for the entire 59.16% disability. Therefore, the appellant is entitled to compensation for 59.16% rounded off to 60% at the rate of Rs.3,000/- per percentage. The amount granted by the Tribunal towards disability is modified to Rs.1,80,000/- (Rs.3,000/- x 60%). Considering the accident register, wound certificate and medical bills, the amount granted by the Tribunal towards extra nourishment and transportation are meagre and the same are enhanced to Rs.10,000/- each under those heads. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to cloth and this Court awards a sum of Rs.10,000/-, Rs.10,000/- and Rs.1,000/- under those heads respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain & suffering	30,000	30,000	Confirmed
2.	Partial loss of income	45,000	45,000	Confirmed
3.	Food and extra nourishment	5,000	10,000	Enhanced
4.	Medical expenses	68,000	68,000	Confirmed



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5.	Transportation	2,000	10,000	Enhanced
6.	Disability	75,000	1,80,000	Enhanced
7.	Attendant charges	-	10,000	Granted
8.	Loss of amenities	-	10,000	Granted
9.	Damages to cloth	-	1,000	Granted
	Total	Rs.2,25,000/-	Rs.3,64,000/-	Enhanced by - Rs.1,39,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,000/- is hereby enhanced to Rs.3,64,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

To

1. The Special Judge,
Sub Court -I,
Motor Accidents Claims Tribunal,
Salem.



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

+1cc to Mr.S.Manohar, Advocate Sr.42761

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