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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.191 of 2018

A.Swaminathan

.. Appellant/Claimant

Vs.

1. G.Gopalakrishnan

2. The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach Moore Street,
Chennai - 600 001.
Now at: Door No.232, NSC Bose Road,
Bombay Mutual Building,
Chennai - 1.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.11.2017 made in M.C.O.P.No.1835 of 2011 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.U.Swathy

For R2 : Mr.N.Anand

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 09.11.2017 made in M.C.O.P.No.1835 of 2011 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.1835 of 2011 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.07.2010.



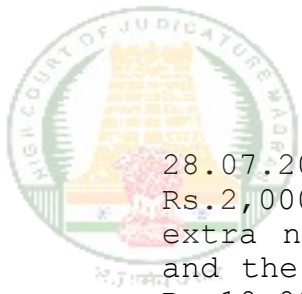
The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the van belonging to the 1st respondent and directed the 2nd respondent/ Insurance Company being insurer of the said van to pay a sum of Rs.1,19,000/- 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/claimant contended that the appellant has sustained fractures on his right femur, laterla femoral condyle, right tibia and right patella. The Tribunal having found that the appellant sustained four fractures in his body, erroneously reduced the disability assessed by the Doctor from 70% to 22.5%. The Tribunal having accepted that the appellant is a driver, ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal towards loss of income during treatment period, extra nourishment, attendant charges and pain & suffering are meagre. The Tribunal has not awarded any amount towards loss of amenities, future treatment and loss of earning power and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. Considering the same, the Tribunal has rightly awarded compensation towards disability applying percentage method. The Tribunal after considering all the materials available on record, has awarded compensation, which is not meagre. 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 not proved that he suffered functional disability and therefore, the Tribunal has awarded compensation towards disability by applying percentage method, which is proper. The Tribunal has given valid reasons for fixing the disability of the appellant at 22.5% and awarded a sum of Rs.67,500/- (Rs.3,000/- X 22.5%) towards disability. The appellant has taken treatment in the hospital as in-patient from



28.07.2010 to 05.08.2010. A sum of Rs.10,000/-, Rs.5,000/- and Rs.2,000/- awarded by the Tribunal towards pain & suffering, extra nourishment and attendant charges respectively are meagre and the same are hereby enhanced to Rs.20,000/-, Rs.10,000/- and Rs.10,000/- respectively. The appellant was a driver and he sustained fractures on his leg. A sum of Rs.12,000/- awarded by the Tribunal towards loss of income during the treatment period is meagre and this Court enhances the same to Rs.30,000/-. 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.	Medical bills	17,790	17,790	Confirmed
2.	Disability	67,500	67,500	Confirmed
3.	Attendant charges	2,000	10,000	Enhanced
4.	Loss of income	12,000	30,000	Enhanced
5.	Pain and suffering	10,000	20,000	Enhanced
6.	Transport to Hospital	5,000	5,000	Confirmed
7.	Extra nourishment	5,000	10,000	Enhanced
	Total	Rs.1,19,290/- rounded off to Rs.1,19,000/-	Rs.1,60,290/-	Enhanced by Rs.41,290/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,19,000/- is hereby enhanced to Rs.1,60,290/- together with interest at the rate of 9% 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. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.20594

C.M.A.No.191 of 2018

SV(CO)
CS/05/08/2019