

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3055 of 2017

Devi

...Appellant /Petitioner

Vs

1.Dr.J.R.Rajasingh

2.United India Insurance Co.Ltd.,
No.104/A, Peramanur Main Road,
Salem.

.... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 16.10.2012 made in MCOP No.359 of 2009 on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents: No appearance for R1
Mr.S.Arunkumar for R2

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.42,300/- towards compensation due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 21.12.2008 at about 08.30 a.m., the appellant was proceeding in the Omalur - Dharmapuri Main Road, by walk. When she reached near Krishna Mahal Kalyana Mandapam, the car bearing Reg.No.TN-30-AZ-8599 belonging to the first respondent and insured with the second respondent Insurance Company, came from the back side in a rash and negligent manner and dashed against the appellant. Due to the said impact, the appellant sustained grievous injuries all over the body. The appellant / claimant filed a claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.42,300/-

with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant /claimant has submitted that even though P.W.2-Doctor assessed the disability of the claimant at 35%, the Tribunal has reduced the percentage of disability to 25% while awarding compensation towards disability. He further submitted that the amounts awarded towards other heads are meagre. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The details of compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (Rs.)
25% Disability	25,000/-
Pain and suffering	5,000/-
Extra nourishment	3,000/-
Transport to hospital	2,000/-
Medical Bills	7,300/-
TOTAL...	42,300/-

8.P.W.2-Doctor deposed before the Tribunal that the injured sustained 35% disability and he issued Ex.P6-Disability Certificate to that effect. The Tribunal has reduced the percentage of disability to 25% and awarded a sum of Rs.25,000/- towards disability at the rate of Rs.1000/- per percentage of disability. It is seen that the appellant sustained fracture of right leg bones and the same are grievous in nature. It is also seen that the appellant underwent operation for the injuries. Considering the nature of injuries suffered by the appellant / claimant, it would be appropriate to sustain the disability of

35% fixed by P.W.2-Doctor and to award a sum of Rs.1,500/- per percentage of disability. If that is done, the amount towards disability works out to Rs.52,500/-. Accordingly, the amount awarded by the Tribunal towards disability stands modified to Rs.52,500/-. The amounts awarded towards other heads are confirmed. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
35% Disability	52,500/-
Pain and suffering	5,000/-
Extra nourishment	3,000/-
Transport to hospital	2,000/-
Medical Bills	7,300/-

TOTAL...	69,800/-
=====	

9.Thus, the appellant / claimant is entitled to the modified compensation of Rs.69,800/-. It is made clear that only for the compensation of Rs.42,300/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.27,500/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

10.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

11.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (Arbitration)

//True Copy//

Sub Assistant Registrar

KM

To

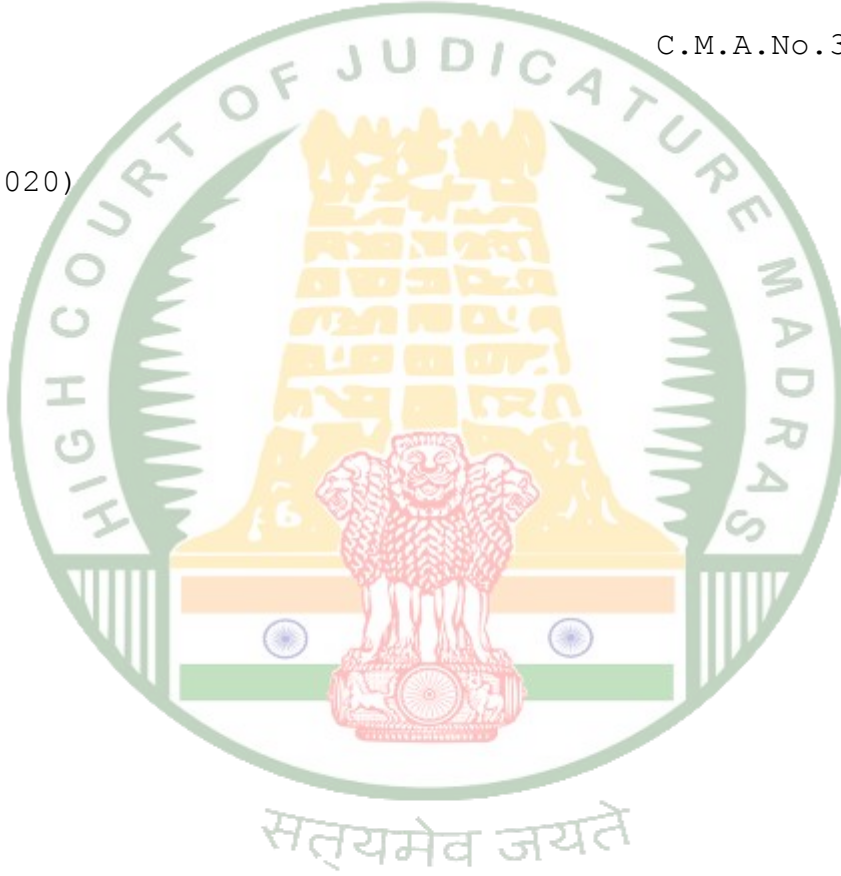
1.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
Madras High Court.

+lcc to Mr.S.Arun Kumar, Advocate, S.R.No. 90004

C.M.A.No.3055 of 2017

BR(CO)
GN(16/03/2020)



WEB COPY