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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.534 of 2017 & 2156 of 2019 and
C.M.P.No.8757 of 2019

C.M.A.No.534 of 2017:

P.Venkatachalam .. Appellant
Vs.
1.Loganathan
2.The Divisional Manager,
M/s.National Insurance Company Limited,
Pondicherry. .. Respondents

C.M.A.No.2156 of 2019:

The Divisional Manager,
M/s.National Insurance Company Limited,
Pondicherry. .. Appellant

Vs.

1.P.Venkatachalam
2.Loganathan .. Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2016 made in M.C.O.P.No.725 of 2014 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Puducherry.

C.M.A.No.534 of 2017:

For Appellant : Mr.T.Ananthasekar
For R2 : Mr.D.Bhaskaran

C.M.A.No.2156 of 2019:

For Appellant : Mr.D.Bhaskaran
For R1 : Mr.T.Ananthasekar



COMMON JUDGMENT

C.M.A.No.534 of 2017 is filed by the claimant for enhancement of compensation and C.M.A.No.2156 of 2019 is filed by the Insurance Company against the award dated 30.11.2016 made in M.C.O.P.No.725 of 2014 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Puducherry.

2.Both the Civil Miscellaneous Appeals arise out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective rank in the claim petition for the sake of convenience.

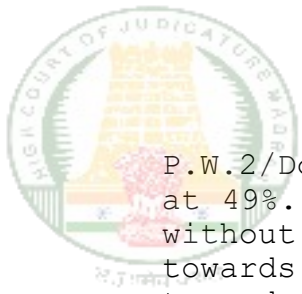
3.The claimant filed the above said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.03.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the said vehicle, to pay a sum of Rs.2,22,600/- as compensation to the claimant at the first instance and recover the same from the first respondent.

5.Not being satisfied with the amount awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.534 of 2017, for enhancement of compensation. Against the award dated 30.11.2016 made in M.C.O.P.No.725 of 2014, the second respondent-Insurance Company has come out with an appeal in C.M.A.No.2156 of 2019, challenging the quantum of compensation awarded by the Tribunal.

6.The learned counsel appearing for the second respondent-Insurance Company contended that P.W.2/Doctor has not properly assessed the disability suffered by the claimant. P.W.2/Doctor is not the Doctor who treated the claimant. Without properly examining the claimant, the Doctor has assessed the disability. P.W.2/Doctor has not filed any supporting documents and percentage of disability assessed by P.W.2/Doctor is excessive and prayed for setting aside the award passed by the Tribunal.

7.Per contra, the learned counsel appearing for the claimants contended that the claimant suffered multiple injuries and fracture in spinal cord. He has taken treatment in the hospital as in-patient from 19.04.2014 to 22.04.2014 and underwent surgery. Due to the injuries, he could not continue his work as he was doing earlier. To prove the same, he examined



P.W.2/Doctor who assessed disability as suffered by the claimant at 49%. The Tribunal reduced the percentage of disability to 45% without any basis and granted meagre sum of Rs.1,35,000/- towards disability. The Tribunal has not granted any amount towards attendant charges, loss of amenities and loss of cloth and prayed for enhancement of compensation.

8.I have heard the learned counsel appearing for the second respondent-Insurance Company as well as the claimant and perused the entire materials on record.

9.From the materials available on record, it is seen that the claimant suffered fracture and multiple injuries in the accident. P.W.2/Doctor has deposed that claimant suffered 49% disability. P.W.2/Doctor has furnished about the particulars of injuries and disability for each percentage. In view of the details of injuries and percentage of disability furnished by P.W.2/Doctor, the contention of the learned counsel for the second respondent that P.W.2/Doctor has not properly assessed the percentage of disability is without merits. The Tribunal has reduced the percentage of disability suffered by the claimant from 49% to 45% on the ground that disability will be cured in future. The reason given by the Tribunal for reducing the percentage of disability suffered by the claimant from 49% to 45% is erroneous. The claimant is entitled to compensation for 49% disability at the rate of Rs.3,000/- per percentage. The amount awarded by the Tribunal towards disability is modified to Rs.1,47,000/- [Rs.3,000/- X 49]. The amounts granted by the Tribunal towards pain and suffering and extra nourishment are meager and the same are hereby enhanced to Rs.25,000/- from Rs.10,000/- and Rs.10,000/- from Rs.5,000/- respectively. The claimant has taken treatment in the hospital as in-patient from 19.04.2014 to 22.04.2014 and underwent surgery. The Tribunal has not granted any amount towards attendant charges and loss of amenities. A sum of Rs.15,000/- and Rs.30,000/- respectively are granted by this Court towards attendant charges and loss of amenities. The learned counsel for the claimant contended that the claimant was a practicing Advocate and due to the injuries and fracture, he cannot continue his work as he was doing earlier. Considering the nature of injuries, treatment taken and disability suffered, the claimant would not have attended his work atleast for six months. The Tribunal fixed monthly income of the claimant at Rs.20,000/- and granted a sum of Rs.20,000/- towards loss of income for one month. The monthly income of the claimant is fixed at Rs.15,000/- and the compensation awarded by the claimant towards loss of income is modified to Rs.90,000/- [Rs.15,000/- X 6]. The compensation awarded by the Tribunal under medical expenses and transportation are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	10,000/-	25,000/-	enhanced
2.	Medical expenses	38,000/-	38,000/-	confirmed
3.	Extra Nourishment	5,000/-	10,000/-	enhanced
4.	Transportation	14,600/-	14,600/-	confirmed
5.	Loss of income	20,000/-	90,000/-	enhanced
6.	Disability	1,35,000/-	1,47,000/-	enhanced
7.	Attendant charges	-	15,000/-	granted
8.	Loss of Amenities	-	30,000/-	granted
	Total	Rs.2,22,600/-	Rs.3,69,600/-	enhanced by Rs.1,47,000/-

10.The compensation awarded by the Tribunal at Rs.2,22,600/- is hereby enhanced to Rs.3,69,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit enhanced award amount now determined by this Court at the first instance and recover the same from the first respondent, 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 claimant is permitted to withdraw the enhanced award amount along with interest and cost, less the amount if any, already withdrawn.

11.In the result, C.M.A.No.534 of 2017, filed by the claimant is allowed in part and C.M.A.No.2156 of 2019, filed by the second respondent-Insurance Company is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar



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To

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1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Puducherry.

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

+1cc to Mr.T.Ananthasekar, Advocate SR.No.35262

C.M.A.Nos.534 of 2017 & 2156 of 2019 and
C.M.P.No.8757 of 2019

MG(CO)
GMY(06/09/2019)