

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.770 of 2017

S.Deepakraj

... Appellant

... Vs ...

1.Dr.N.T.R.Balasubramanian

2.The New India Assurance Company Limited,
Motor Third Party Cell, No.45, Moore Street,
Chennai.

... Respondents

Appeal under Section 173 of the Motor Vehicles Act, 1988
against the Judgment and decree in M.C.O.P. No.4643 of 2011
dated 09.12.2014 on the file of Motor Accident Claims Tribunal,
V Small Causes Judge, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondent-1 : No Appearance
For Respondent-2 : Mrs.Sree Vidhya

JUDGMENT

In respect of the accident that took place on 13.04.2011 at
about 22.30 hours in the Water Tank Road, Ayanavaram, Chennai,
as against the claim made for a sum of Rs.3,00,000/-, the
Tribunal has awarded a sum of Rs.1,07,500/- with interest at the
rate of 7.5% per annum from the date of petition to the
appellant / claimant under the following heads:

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HEADS	AMOUNT (Rs.)
Medical expenses	5,000/-
Transport expenses and extra nourishment	15,000/-
Attender charges	500/-
Permanent disability	72,000/-
Pain and suffering	10,000/-
Loss of amenities	5,000/-

TOTAL....	1,07,500/- =====

2.The facts of the case are that on 13.04.2011 at about 10.30 p.m., while the appellant / claimant was travelling as a pillion rider in the motorcycle bearing Reg.No.TN-20-S-4550 in the Water Tank Road, Ayanavaram, Chennai, the car bearing Reg.No.TN-07-AW-0101 came from the same direction in a rash and negligent manner and dashed against the motorcycle. Due to the impact, the claimant sustained grievous injuries. The appellant / claimant filed a claim petition before the Tribunal claiming compensation for the injuries suffered. The Tribunal, based on the witnesses and documents account, has fastened the liability on the respondents herein / insured and the insurer and quantified the compensation as stated supra. Aggrieved over the same, the claimant has filed the instant appeal.

3.The learned counsel for the appellant, at the outset, submitted that the compensation amounts arrived at by the Tribunal under each and every heads are very low and they need substantial enhancement. It is also submitted that the Tribunal has not awarded any sum towards loss of earnings, when the fact remained that the claimant took continuous treatment for more than three months after the accident.

4.Per contra, the learned counsel for the second respondent / insurance company has submitted that the Tribunal has considered each and every aspect into consideration and has awarded the compensation, which is nothing but just and proper, hence it requires no interference in the hands of this Court. She further submitted that the Tribunal has taken into consideration the evidence of the Doctor in a proper perspective and has awarded the compensation.

5.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

6.Based on Ex.P3-Discharge Summary, Ex.P6-X-ray and Ex.P7-Disability Certificate, the Tribunal has awarded a sum of Rs.5,000/- towards medical expenses, Rs.15,000/- towards Transportation and extra nourishment and Rs.500 towards attender charges. The Tribunal has adopted conventional methodology and has awarded the sums of Rs.10,000/- and Rs.5,000/- towards pain and suffering and loss of amenities, respectively. This Court is of the opinion that the findings rendered by the Tribunal on quantum under the above heads are based on evidence on record, conventional methodology and second schedule of the Motor Vehicles Act which do not require any interference at the hands of this Court. As far as the quantum of compensation awarded by the Tribunal at Rs.72,000/- towards permanent disability is concerned, it has to be pointed out that the Doctor has assessed the disability of the claimant at 60%. To arrive at such an assessment, the Doctor PW-3 has pointed out that the appellant / claimant suffered fracture of medial condyle right knee, fracture of tibial spine and fracture of right big toe, fracture of right medial condyle femur. He also pointed out that the right tibial spine of the claimant has been is malunited. He also opined that the claimant experiences difficulty to squat and has assessed 45% disability in that respect, and for fracture of right big toe and the malunion of bones, the Doctor has assessed 15% disability. In total, the Doctor assessed the disability of the claimant at 60% and issued Ex.P6 disability certificate to that effect. But the Tribunal has fixed the disability at 36% by adopting the formula issued on the guidelines by the Department of Orthopaedics of Government of Tamilnadu and has awarded Rs.72,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. This Court is of the opinion that for the said discomforts mentioned, the award of Rs.72,000/- towards disability is very low and it would be appropriate to award an additional sum of Rs.75,000/- towards this head, to meet the ends of justice. If that is done, the compensation towards permanent disability works out to Rs.1,47,000/-. Accordingly, the amount awarded by the Tribunal towards Permanent Disability stands modified to Rs.1,47,000/-. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Medical expenses	5,000/-
Transport expenses and extra nourishment	15,000/-
Attender charges	500/-
Permanent disability	1,47,000/-
Pain and suffering	10,000/-
Loss of amenities	5,000/-

TOTAL....	1,82,500/- =====

Thus the appellant / claimant is entitled to the modified compensation of Rs.1,82,500/-. It is made clear that only for the compensation of Rs.1,07,500/- 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.75,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

7.In the result, the appeal is partly allowed. No costs. The second respondent / insurer is directed to deposit the modified amount of compensation, as ordered above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

drl/km
To

1. The V Small Causes Judge
Motor Accident Claims Tribunal,
Chennai.

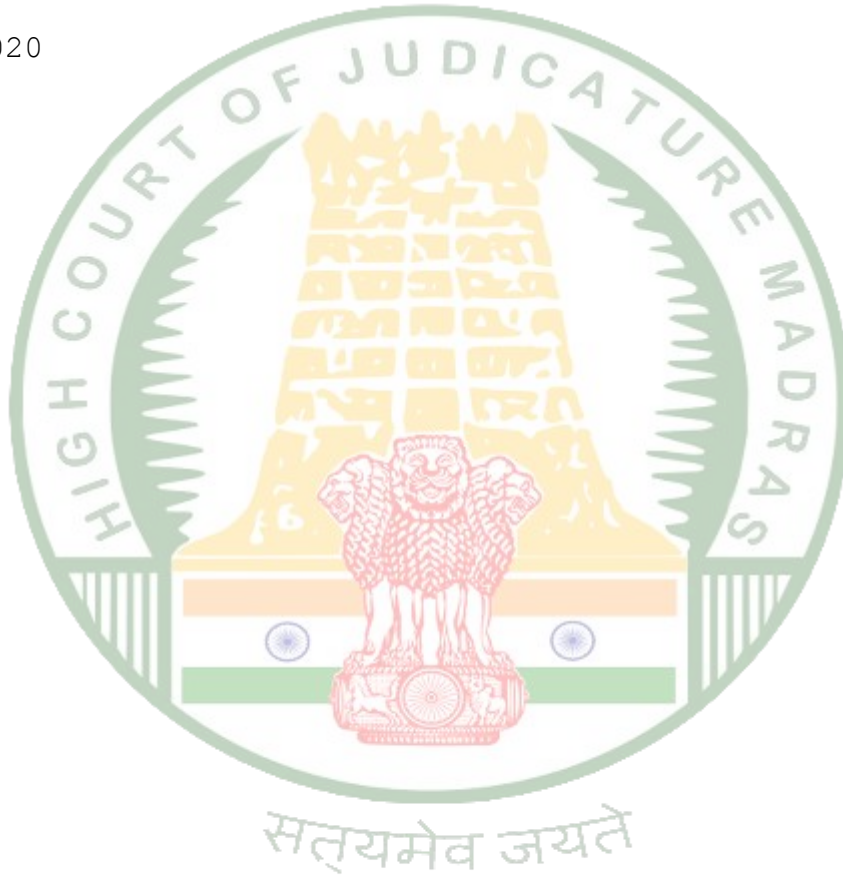
Copy to

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

+1 cc to Mr.Varada Kamaraj Advocate sr82249

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