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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2299 of 2013

V. Pandian

.. Appellant/Petitioner

Vs.

1. P. Shanmugam

(R1 remained exparte before the Tribunal)

2. M/s. United India Insurance Co. Ltd.,  
No.58, Purasawakkam High Road,  
Chennai 600 007.

3. P.Venkatesan

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2013, made in M.C.O.P. No.1946 of 2007, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.C.Paranthaman (For R2)

R1 : Exparte

R3 : Left

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 19.03.2013, made in M.C.O.P. No.1946 of 2007, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.



2.The appellant-claimant filed M.C.O.P. No.1946 of 2007, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.3,00,500/- restricted to Rs.3,00,000/-, as compensation for the injuries sustained by him in the accident that took place on 24.04.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 3<sup>rd</sup> respondent, rider of the Motorcycle belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent, as insurer of the offending vehicle to pay a sum of Rs.1,37,500/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.03.2013, made in M.C.O.P. No.1946 of 2007, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained segmental fracture in right leg both bones and suffered 50% permanent and partial disability, as assessed by P.W.2 Doctor. The Tribunal reduced the same to 45% without giving any reason and awarded only a meagre sum of Rs.2,000/- per percentage for 45% disability. The appellant was a student at the time of accident. The Tribunal failed to consider the future prospects of the appellant. For the injuries sustained in the accident, the appellant has taken treatment for a long span and is limping. The Tribunal considering the nature of injuries, ought to have adopted multiplier method and awarded compensation towards loss of earning power. The Tribunal failed to award any amount towards loss of amenities of life and future medical treatment. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2 Doctor and disability certificate marked as Ex.P9, rightly reduced the percentage of disability sustained by the appellant to 45%, holding that P.W.2 Doctor is not the Doctor who treated the appellant. The Tribunal considering the nature of injuries sustained by the appellant, rightly adopted percentage method and awarded compensation towards disability. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

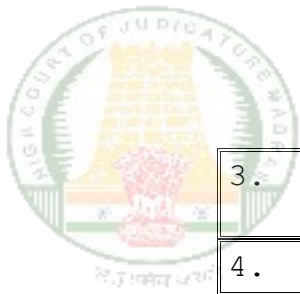
7.Heard learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent-Insurance Company and perused the materials available on record.



8. From the materials on record, it is seen that it is the contention of the appellant that in the accident, the appellant suffered fracture in right leg both bones. P.W.2 Doctor assessed the disability suffered by the appellant as 50% and issued disability certificate, marked as Ex.P9. The Tribunal considering the nature of injuries, reduced the percentage of disability to 45% and granted compensation by percentage method. The accident is of the year 2007. At the time of accident, the appellant was a minor aged 14 years. Considering the age of the appellant, nature of injuries and disability suffered, percentage of disability assessed by P.W.2 Doctor is fixed at 30%. Following the judgment of the Honb'le Apex Court reported in (2014) 14 SCC 396, [Mallikarjun Vs. Divisional Manager, National Insurance Company and another], the appellant is entitled to a sum of Rs.3,00,000/- towards disability, including pain and suffering and loss of amenities. In view of the same, the amount of Rs.35,000/- granted by the Tribunal separately towards pain and suffering is set aside. In addition to the amount granted towards disability, the appellant is entitled to compensation only for attendant charges and medical expenses. The appellant has taken treatment as in-patient in Government Royapettah Hospital in two different spells, viz., from 24.04.2007 to 14.05.2007 and from 25.05.2007 to 29.05.2007. Though the appellant has taken treatment in Government Hospital, he would have spent some amount towards medical expenses. Hence, a sum of Rs.15,000/- is granted towards medical expenses. Considering the period of treatment taken by the appellant, a sum of Rs.15,000/- is granted towards attendant charges. The amount awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.    | Transportation    | 4,000/-                         | 4,000/-                           | Confirmed                              |
| 2.    | Extra nourishment | 8,000/-                         | 8,000/-                           | Confirmed                              |



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|    |                                                              |            |            |                           |
|----|--------------------------------------------------------------|------------|------------|---------------------------|
| 3. | Damages to clothes                                           | 500/-      | 500/-      | Confirmed                 |
| 4. | Medical expenses                                             | -          | 15,000/-   | Granted                   |
| 5. | Pain and suffering                                           | 35,000/-   | -          | Set aside                 |
| 6. | Attendant charges                                            | -          | 15,000/-   | Granted                   |
| 7. | Permanent disability, pain and suffering & loss of amenities | 90,000/-   | 3,00,000/- | Enhanced                  |
|    | Total                                                        | 1,37,500/- | 3,42,500/- | Enhanced by Rs.2,05,000/- |

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,37,500/- is enhanced to Rs.3,42,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1946 of 2007. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-  
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The III Judge,  
Small Causes Court,  
(Motor Accident Claims Tribunal), Chennai.



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

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+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.40028

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.39864

C.M.A.No.2299 of 2013

AK (CO)  
GMY (24/08/2021)