

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1505 of 2016

Chidambareswaran

.. Appellant/Petitioner

/versus/

1.Shyam Hotels and Restaurants,
No.228, Chennai Thirupathi High Road,
Veppampattu, Chennai 602 024.
(R1 already set exparte in lower Court)
(R1 notice may be dispense with)

2.United India Ins.Co.Ltd.,
No.127/A, 1st Floor, Trunk Road,
Poonamallee, Chennai 56. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under
Section 173 of Motor Vehicles Act, 1988 against the decree and
award dated 30.11.2015 made in M.C.O.P.No.467 of 2013 on the
file of the Motor Accident Claims Tribunal, Subordinate Judge,
Poonamallee.

For Appellant :Mr.J.Mahalingam

For R2 :Mr.S.Arunkumar

For R1 :Exparte

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel appearing for the appellant and
the learned counsel appearing for the 2nd respondent.

2.For enhancement of compensation,the claimant has preferred this appeal.

3.According to the case records, the claimant met with an accident on 03.05.2013. While he was riding his motor cycle along Poonamallee Mount Road, near Porur Chettiyar Agaram, a van bearing Reg.No.TN-20-BL-2245 rashly and negligently hit the claimant's two wheeler. The claimant sustained fracture injury on his right leg and lacerated injury on his left leg. He was hospitalised for 20 days. At the time of discharge, comminuted fracture injury was found on the right tibia and fibula. The Doctor, who was examined on behalf of the claimant has certified the disability as 40%. Based on the materials and medical bills, the Tribunal has awarded compensation of Rs. 2,29,804/-.

4.The learned counsel appearing for the appellant would submit that the Tribunal ought to have awarded more compensation for injury, since the disability sustained by the claimant was assessed as 40% by the Doctor with 20% of loss of muscle power and 30% of ankle restriction. Further, the counsel would also submit that the Tribunal had failed to award Rs.3,000/- per percentage of disability and failed to award compensation on other non-conventional heads like, damages to cloths, mental agony, loss of amenities and loss of expectation of life and medical attendance.

5. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the Tribunal has followed the guided principles of the Hon'ble Supreme Court and the High Court regarding fixation of compensation and in the year 2011, Rs.2,000/- per percentage was awarded for partial permanent disability. Infact, the Tribunal ought to have taken note that the Doctor has assessed the disability excessively at 40% when the injury was comminuted fracture on the right leg which was cured but misunited after treatment. The Tribunal ought to have assessed the disability only at the most 20%, since amputation below middle thigh to blow knee itself is fixed as 60% in the schedule annexed to Employee's Compensation Act, 1923.

6.On hearing the submissions of the learned counsels on either side, this Court finds that there is no error in the Tribunal award of Rs.2,29,804/- as compensation for the injury sustained by the appellant. Though the Tribunal has awarded only Rs.2,000/- per percentage of disability, the disability assessed by the Tribunal is highly excessive contra to the nature of the injury sustained by the claimant. Since over all compensation awarded to the claimant appears to be fair and just, this Court is not inclined to interfere with the award of the Tribunal.

7.In the result, this Civil Miscellaneous Appeal is dismissed. The judgment passed by the Motor Accident Claims Tribunal(Subordinate Court), Poonamallee made in M.C.O.P.No. 467 of 2013 dated 30.11.2015 is confirmed. No costs.

Sd/-

Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

ari

To

The Motor Accident Claims Tribunal,
Subordinate Court, Poonamallee.

Copy To:

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.29080

C.M.A.No.1505 of 2016

AK(CO)
GMY(22/04/2021)

सत्यमेव जयते

WEB COPY