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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2803 of 2015

S.Gopinathan

... Appellant/Claimant

/versus/

1.R.Muthu

2.M/s.Royal Sundaram Alliances Insurance Co., Ltd,
"Sundaram Travels"
Nos.45 & 46,Whites Road,
Chennai-600 014.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgement and Decree dated 16.07.2013 in M.C.O.P.No.139 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Madurantagam for enhancement of compensation.

For Appellant : Mr.K.Govi Ganesan

For Respondents : M/s.Harini for
Mr.N.Vijayaragahavan for R2
R1-Ex-parte

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant and the respondents.

2. This appeal is filed by the claimant not satisfied with the award of Rs.54,300/- for the injury sustained by the claimant in the road accident occurred on 06.10.2008. From the records, this Court finds that on 06/10/2008, while the appellant/claimant was riding a bicycle on GST Road, opposite to Lakshmi Petrol Bunk, Melmaruvathur, a lorry bearing Registration No.TN 25 W 4079 came in a rash and negligent manner and hit behind the bicycle, causing greivous injury to the claimant. Thereafter, the claimant was admitted in Melmaruvathur Hospital as in-patient for three days to treat the injury caused on his head, left hand, hip and leg. X-Ray report revealed that fracture of left hand little finger and the same was treated



conventionally. After three days, he was discharged.

3. In the claim petition, it is contended that at the time of accident, the injured was pursuing his Diploma Degree in Electrical and Electronic Engineering and due to the accident, he could not sit and stand, walk freely and often suffers head ache. The Doctor, who had clinically examined the claimant, had given a Disability Certificate/Ex-P14, assessing 40% permanent disability for the said injuries. The Tribunal has awarded a sum of Rs.40,000/- for Disability, Rs.10,000/- for Pain and Suffering, Rs.2,000/- for Nutrition Food, Rs.2,000/- for Transport and Rs.300/- for Medical Expenses. The respondents 1 and 2 were jointly and severally held responsible. Since the insurance with the 2nd respondent by the first respondent is in force, the 2nd respondent to pay the award amount with 7.5% interest and costs from the date of filing of the claim petition till the date of realisation.

4. In this appeal for enhancement, the claimant prays that for 40% disability and pain and suffering, the Tribunal ought to have awarded higher compensation commensurating to the disability and pain and suffering. For Extra-Nourishment, the award of Rs.2,000/- is very low and meagre.

5. The learned counsel for the appellant would submit that due to the injury sustained on the head, the claimant is suffering frequent headache and his avocation is greatly affected. The Doctor/PW2, who examined the injured, has reported that concussion on the brain will cause him frequent headache. For the said reason, the disability is assessed at 40%. The appellant herein has relied upon 16 exhibits. Accident Report marked as Ex.P2 reveals that the claimant was injured in the road accident due to the rash and negligent driving of the first respondent vehicle. The injured was admitted in the Hospital and treated as in-patient for three days. The CTC Scan Report/Exs.P4 and P5 and X-Ray/Exs.P7 and P15 were relied by the Doctor/P.W.2 for issuing the disability certificate/Ex.P14. Fracture in the little finger and concussion of brain area, according to P.W.2, has caused 40% disability. The Trial Court has also accepted the same. Though the counsel for the respondent would state that the said assessment is highly excessive, without any significant basis, since the Tribunal has accepted the same, this Court is not inclined to reduce the percentage of disability. For the said disability, the Tribunal has awarded a sum of Rs.1,000/- per percentage, since the accident occurred in the year 2008. In some cases, the Supreme Court has recommended awarding Rs.2,000/- per percentage for disability, the same yardstick is applied in this case and the award of the Tribunal is modified as below:

Disability : Rs.80,000/-



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(Rs.2000 X 40)

Pain and Suffering	:	Rs.10,000/-
Nutrition Food	:	Rs.2,000/-
Transport	:	Rs.2,000/-
Medical Expenses	:	Rs.5,000/-
Loss of clothes and materials	:	Rs.2,000/-
Total	:	Rs.1,01,000/-

6. Accordingly, the Civil Miscellaneous Appeal is partly allowed with costs. The compensation enhanced by this court has to be paid with interest 7.5% from the date of numbering the claim petition till the date of realisation. The second respondent / Insurance Company is directed to deposit the said compensation within a period of twelve weeks from the date of receipt of a copy of this order and on such deposit, the appellant/claimant is permitted to withdraw the same after completing proper formalities.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssb

To

- 1.The Motor Accident Claims Tribunal,
Subordinate Judge, Madurantagam.
- 2.The Section Officer,
VR Section, High Court,
Chennai 600 104.

C.M.A.No.2803 of 2015

MG (CO)
GN (22/09/2021)