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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1621 of 2016

A.Ameenul Hussain

...Appellant

/versus/

1.R.Lordson Millar,

2.The Branch Manager,

New India Assurance Co.Ltd.,
TP Hub Sethu Krishna Centre,
133/31-A, Trichy Main Road,
Near Raja Sabari Theatre,
Gugai, Salem-6.

...Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to allow the present appeal award enhanced compensation in judgment and decree dated 07.11.2014 in M.C.O.P.No.1550 of 2013 passed by the Motor Accident Claims Tribunal (Special Sub Court No.I), Salem.

For Appellant : Ms.Revathy
for Mr.R.Nalliyappan

For Respondents :Mr.A.Solomi for R2
R1-Exparte

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the claimant for enhancement of compensation.

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

3. On 30.04.2011, when the claimant was travelling in a TVS 50 motorcycle on the extreme left of the Omalur to Salem NH road, a car bearing registration No.TN 01 AB 1661 dashed against him. In the accident, the claimant sustained head injury and abrasion all over the body. The claim petition for Rs.5,00,000/- seeking compensation has been filed by the claimant before the



Motor Accidents Claims Tribunal.

4. In the counter, the Insurance Company has contested the claim on the ground that the accident occurred due to the fault of the claimant who while driving his bike suddenly tried to cross the road without adopting traffic rules. Since the accident occurred due to the negligence of the claimant, he is not entitled for compensation.

5. Before the Tribunal, the claimant has marked 5 Exhibits Ex.P1 to Ex.P5 and the hospital records were called for through PW-3 and marked as Ex.X1 to Ex.X5.

6. The Tribunal on considering the rival submission held that the accident occurred due to the negligence of the car driver. So the Insurance Company is liable to indemnify the insured. Relying upon the discharge summary Ex.P2, which shows that the claimant has sustained crush injury on the right foot leading to amputation of his great toe, the Tribunal has awarded a sum of Rs.1,22,000/- assessed the disability at 15%. The compensation for disability was fixed at the rate of Rs.2,000/- per percentage.

7. The learned counsel for the appellant submitted that the Tribunal failed to award adequately for the total permanent disability caused due to amputation of great toe, further for attender charges no compensation was awarded.

8. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the injured person was hospitalised for 5 days from 01.05.2011 to 05.05.2011 and treated conservatively for amputation of great toe. Since Rs.50,000/- for pain and suffering and Rs.30,000/- for disability is awarded, the award of the Tribunal is sufficiently high and fair, there is no necessity to interfere with the award.

9. This Court on considering the fact that the claimant has not produced any documents to prove his age and income and loss of income, the Tribunal relying upon the disability certificate given by the doctor marked as Ex.X3, has awarded a sum of Rs.30,000/- as compensation for the disability. Besides awarded Rs.91,000/- for medical expenses, pain and suffering etc.

10. On considering the fact that the claimant has lost his right great toe in the accident, which as per the Employees Workmen Compensation Act, 1923, a total permanent disability and the loss is 14%. The compensation has to be awarded as per the multiplier. In this case the claimant has not filed any documents to prove his age. However the claimant has crossed 60 years. The Tribunal has also accepted the same in the absence of



any proof for his age and income. Hence this Court notionally fix the income of the claimant at Rs.4,500/- per month with 10% addition towards future prospects. Applying multiplier "7" for 14% disability a sum of Rs.58,212/- is awarded.

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11. Accordingly, the Tribunal award is modified and enhanced from Rs.1,22,000/- to Rs.1,50,212/- rounded off to Rs.1,50,500/-. The 2nd respondent/Insurance Company shall pay the compensation as enhanced in this appeal with interest at the rate of 7.5% within a period of twelve weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the same filing appropriate petition.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal,
Special Sub Court No.I, Salem.

C.M.A.No.1621 of 2016

RGN(CO)
CB(01/09/2021)