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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.612 of 2011

(Through Video Conferencing)

Ravi ... Appellant/Petitioner

Vs.

1.R.Ramasamy

2.ICICI Lombard General Insurance Co. Ltd.,
Chottabai Centre, 2nd & 3rd Floor,
Nungambakkam Main Road,
Chennai - 34.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as amended by Act 54 of 1994, to set aside the order dated 08.08.2009 made in M.C.O.P.No.822 of 2006 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court, Salem in respect of contributory negligence and to enhance the compensation.

For Appellant : Mr.C.Kulanthaivel

For 2nd Respondent : M/s.R.Sreevidhya

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal and is aggrieved by the impugned Judgment and Decree dated 08.08.2009 passed by the Motor Accident Claims Tribunal cum Additional Subordinate Court, Salem in M.C.O.P.No.822 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,04,336/- as compensation together with interest 7.5% per annum from the date of filing of the claim petition till the date of deposit to the appellant. The aforesaid amount was awarded after deducting 50% towards contributory negligence on the part of the appellant. In this appeal, the appellant seeks for enhancement of compensation.

3. The brief facts of the case are that on 18.06.2006 at about 2.45 p.m, while the appellant was travelling as a pillion rider in a TVS-50 driven by his friend Mohankumar near Seenapuram Bus Stop, Muthusamy Thouttam, an Auto bearing registration No.TN-39-AD-7663 allegedly came from the opposite



direction and dashed against the said TVS-50, as a result of which, as per the claim petition, the appellant sustained the following injuries:-

- i. Fracture in right side leg knee bone.
- ii. Skin tarred in right side leg knee.
- iii. Heavy beet * in right side hip.
- iv. Heavy beet * in right side shoulder.
- v. Heavy beet * in back side of head.
- vi. Heavy beet * in right side leg tow.
- vii. Lacerated injuries all over the body."

(*Meaning of Heavy blows)

4. Therefore, the appellant filed a claim petition for compensation of Rs.9,27,000/-. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation to the appellant. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the appellant for enhancement of compensation.

5. The learned counsel for the appellant submits that the appellant was a pillion rider and therefore, it cannot be concluded that there was contributory negligence on the part of the appellant. Therefore, the impugned Judgment and Decree holding 50% deduction from the compensation was liable to be set aside. It is further submitted that the amount awarded by the Tribunal towards loss of income at Rs.3,000/- for 15 months was liable to be increased.

6. He further submits that the Tribunal also erred in awarding only Rs.55,000/- towards injury. He also submits that the Tribunal ought to have awarded compensation on account of permanent disability by applying the multiplier as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343.

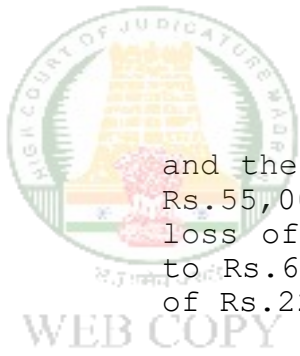
7. Defending the impugned Judgment and Decree passed by the Tribunal, the learned counsel for the 2nd respondent Insurance Company submits that the decision of the Hon'ble Supreme Court in Raj Kumar case referred to supra make its clear that there should be a functional disability. In this case, there was no functional disability and therefore multiplier cannot be adopted. It is further submitted that even otherwise, the Tribunal has considered the so called functional disability considering the nature of injuries and the avocation of the appellant.

8. The learned counsel for the 2nd respondent Insurance Company further submits that the Tribunal has correctly deducted 50% on account of contributory negligence.

9. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for



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and the amount awarded towards partial permanent disability at Rs.55,000/-. The compensation awarded by the Tribunal towards loss of income for the 15 months is enhanced from Rs.45,000/- to Rs.67,500/- (4,500 x 15). Thus, there shall be an increase of Rs.22,500/-.

15. The Tribunal has awarded a sum of Rs.55,000/- for 55% partial permanent disability at Rs.1,000/- per percentage and the same is increased at Rs.1,500/- per percentage to sum of Rs.82,500/- (55 x 1,500) towards injuries. Thus, there shall be an increase of Rs.27,500/-. Therefore, the compensation of Rs.2,08,672/- awarded by the Tribunal is enhanced as follows:-

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.45,000/-	* Rs.67,500/-
Transportation	Rs. 5,000/-	Rs. 5,000/-
Extra Nourishment	Rs.15,000/-	Rs.15,000/-
Damages to clothes	Rs. 2,000/-	Rs. 2,000/-
Medical Expenses	Rs.61,672/-	Rs.61,672/-
Pain and Suffering	Rs.25,000/-	Rs.25,000/-
55% Partial Permanent Disability	Rs.55,000/-	Nil
Injury	Nil	** Rs.82,500/-
Total	Rs.2,08,672/-	Rs.2,58,672/-

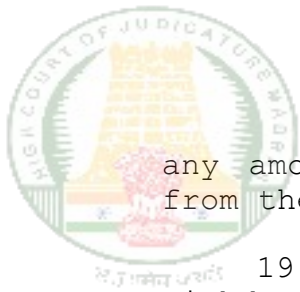
* Enhanced at Rs.4,500/- x 15

** Enhanced at Rs.1,500/- x 55

16. Since the appellant has filed this Civil Miscellaneous Appeal with delay of 92 days, it is made clear that there shall be no interest for the aforesaid period of delay.

17. Though the Tribunal has directed the respondents to deposit the compensation jointly or severally, I am of the view that it is the 2nd respondent Insurance Company is liable to pay the compensation to the appellant as the 2nd respondent Insurance Company has contracted a contract of insurance which is contract of indemnity to indemnify the 1st respondent against any liability that may be fastened against the owner of the vehicle under the Motor Vehicles Act, 1988.

18. Therefore, the 2nd respondent Insurance Company is directed to deposit the compensation of Rs.2,58,672/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit except for the period of delay and proportionate costs awarded by the Tribunal, less



any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

19. On such deposit, the appellant is permitted to withdraw the same together with interest and cost, less any amount already withdrawn, by filing suitable applications before the Tribunal.

20. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Motor Accident Claims Tribunal,
Additional Subordinate Court, Salem.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.42665

C.M.A.No.612 of 2011

KJ (CO)
GN (25/08/2021)