

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.502 of 2015

M.Saravanan

....Appellant/Petitioner

Vs

1.K.Jagadheesan

2.M/s.The Oriental Insurance Company Ltd.,

Kumar Complex, 1st Floor,

No.146, West Car Street,

Tiruchengode Taluk 637 211.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2014 made in M.C.O.P.No.193 of 2013 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.MA.P.Thangavel

For Respondents : Mr.J.Chandran for R2

No Appearance for R1

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the second respondent.

2.The appeal is filed for enhancement of compensation by the accident injured being unsatisfied with the award passed by the MACT, Namakkal.

3.On 11.08.2012, when the appellant was travelling as a pillion rider along Samuthuvapuram bridge at Paruthipalli village, the two wheeler was hit by a bike bearing Registration

No.KA-03-ER-1202, coming from the opposite direction. In the said accident, the appellant sustained multiple grievous injuries and compound fractures. He was admitted on 11.08.2012 at LKM hospital, after getting first aid treatment at G.H., Salem. For the fractured injury in bones of the right leg, surgery was conducted and fixed with A.O nail and bolt. He was discharged from the hospital on 13.09.2012. Subsequently, on 27.05.2013, admitted for the removal of the plate and after treatment, he was discharged on 09.06.2013. Closed reduction of the fracture femur obtained with cancellous screws and washers. The claimant in his petition sought Rs.5,00,000/- compensation against the owner of the offending vehicle and its insurer.

4.The Tribunal, on considering the evidence awarded Rs.2,31,638/-.

5.In this appeal, the injured claimant seeks for enhanced compensation on the ground that the Doctor, who has clinically examined the claimant, had given Disability Certificate Ex.P8 assessing partial disability at 45% whereas the Tribunal has reduced the disability at 25% and awarded Rs.2000/- per percentage of disability, without accepting the assessment of the doctor. Further, he would submit that the claimant has suffered future medical expenses and the same was not taken into consideration.

6. Regarding loss of income during the treatment period, the learned counsel for the appellant submitted that the claimant was working as Driller in Arulkumaran Bore Wells, Tiruchengode and earning Rs.12,000/- per month but the Tribunal has fixed only Rs.5,000/- as monthly income.

7.Learned counsel appearing for the respondent Insurance Company submits that the Tribunal has rightly assessed partial permanent disability at 25% after considering the evidence given by P.W.2 Doctor, who gave the disability Ex.P8. The doctor has assessed the damage for part of the body and certified that the disability is 48%. The Tribunal has converted the disability to the whole body.

8. This Court finds that for the fracture of right leg femur bone and right hip, the claimant has taken treatment as inpatient initially for a period of 32 days and later for a period of 13 days. The second surgery was conducted due to fracture neck of femur with infected implant right leg.

9. Taking note of the period of treatment as inpatient and the nature of injury, the award of the Tribunal is modified and enhanced as below:

Compensation under Various Heads	Award passed by this Court
Temporary loss of income (6000X4)	Rs. 24,000/-
Transport to hospital	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-
Medical Expenses	Rs.1,48,638/-
Pain and Suffering	Rs. 10,000/-
Partial Permanent disability (25X3000)	Rs. 75,000/-
Attender Charges	Rs. 5,000/-
Total	Rs.2,72,638/-

The amount shall be deposited by the respondents along with interest at the rate of 7.5% interest per annum from the date of numbering the petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant shall withdraw the money on appropriate application.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No Costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

vri

To
1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal, Namakkal

Copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.Ma.P.Thangavel Advocate sr38518
+1 cc to Mr.J.Chandran, Advocate sr38190

CMA No.502 of 2015

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