

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1803 of 2016

N.P.Sowkath Ali Jinnah

..Appellant/Petitioner

Vs.

1. Mannee Jitendra Babu,
I Flex Solutions Ltd.,
No.143-I,Nungambakkam High Road,
Nungambakkam, Chennai-600 034.
2. ICICI Lombard Gen.Ins.Co.Ltd.,
Chottabhai Centre,
No.140, 2nd and 3rd Floor, Nungambakkam High Road,
Chennai-600 034. ...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award & Decree dated 02.09.2013 passed in M.C.O.P.No.4173 of 2010 on the file of the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.R.Sreevidhya for R2

R1-Ex-parte

J U D G M E N T

The award of compensation is challenged by the appellant/claimant seeking further enhancement.

2. The accident occurred on 30.10.2009 at about 16.15 hrs at Dr.Besant Road, Opposite to Corporation Office, Chennai. The appellant sustained injuries of Grade I compound fracture distal tibia and fibula right, lacerated injury over right leg, head injury. The claim petition was filed seeking compensation of Rs.5,50,000/- and the Tribunal adjudicated the issues with reference to the entitlement of the claimant. As far as the rash and negligent driving of the motor cycle is concerned, the tribunal arrived at a conclusion that the first respondent was

responsible for the accident and as far as the policy coverage is concerned, it is held that the claimant is entitled for compensation. Thus, the Tribunal proceeded towards assessment of compensation. Ex.P2 is the copy of accident register issued by Government, Royapettah Hospital, Chennai. Ex.P4 is the Discharge Summary issued by MIOT Hospital shows that the claimant sustained grade I compound fracture distal tibia and fibula right and was treated as inpatient from 30.10.2009 to 24.11.2009 and undergone surgery thereby on 31.10.2009 plate osteosynthesis tibia and fibula right leg and on 17.11.2009, debridement reverse sural artery island fasciocutaneous flap right leg and below knee POP slab application were done. The said treatment was supported by Ex.P11, X-ray report. Thereafter, he was treated as inpatient from 02.03.2010 to 13.03.2010 in the very same hospital. P.W.2, who had not given treatment to the petitioner, assessed the disability, after a lapse of four years. The Doctor evidence P.W.2 assessed the disability as 50%, which was modified as 45% by the tribunal. Therefore, this Court do not find any infirmity in respect of fixation of disability. However, the amount of Rs.1,800/- per percentage fixed by the Tribunal is to be enhanced as Rs.3,000/-, since the accident took place on 30.10.2009. Under these circumstances, this Court is inclined to enhance the compensation under the head of disability as Rs.3,000/- per percentage for 45% of disability and accordingly, (Rs.3,000/- X 45=Rs.1,35,000/-) is awarded under the head of disability. With reference to award of compensation in respect of other heads, no enhancement is required.

3. The second respondent/Insurance Company is directed to deposit the award amount of Rs.2,49,369/- with accrued interest at the rate of 7.5% per annum, if not already deposited, within a period of two weeks from the date of receipt of a copy of this Judgment and on such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing appropriate application and the payments are to be made through RTGS. The appellant is directed to pay the additional Court fee for enhanced compensation.

4. Accordingly, the civil miscellaneous appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accidents Claims Tribunal
(IV Small Causes Court), Chennai.

Copy to

The Section Officer,
V.R Section, High Court Madras.

+1 cc to M/s. K.Varadhakamaraj, Advocate Sr.No. 19432

+1 cc to M/s.R.Sreevidhya, Advocate Sr.No. 20287

C.M.A.No.1803 of 2016

GMR (CO)
RMP (21/01/2021)



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