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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1919 of 2016

Gandhi .. Appellant/Petitioner

/versus/

1.Murugesan

(Notice to R1 may be dispensed with
for the set ex parte before the tribunal)

2.Reliance General Insurance Co. ltd.,

3rd Floor, 406 Perundurai Road,

Erode 638 011.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.296 of 2014, dated 13.06.2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For R1 : Exparte

For R2 : Mr.S.Arunkumar

J U D G M E N T

(This case has been heard through Video Conference)

Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent/Insurance Company.

2. The appellant is the claimant before the Tribunal unsatisfied with the compensation awarded by the Tribunal, the present appeal is filed.

3. According to the appellant, on 27.08.2013, when he was carefully walking on the left side of the road margin at Pachagoundan Valasu to Solasiramani road, opposite to the Maruthi Waybridge, a motorcycle bearing registration No. TN-33 AS-0373 hit him from behind. The wheel of the motorcycle ran over his left leg. He was taken to the hospital and treated for the fractured injury. He preferred the claim petition seeking compensation of Rs.15,00,000/-.



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4. The claim was opposed by the 2nd respondent/Insurance Company on various grounds including attributing negligence on the part of the claimant and the rider of the two wheeler had no driving license.

5. Before the Tribunal, the claimant has filed 12 documents to show that the negligence was on the part of the rider of the two wheeler. Criminal case was registered against the driver by the police for rash and negligent driving. The injury sustained in the accident caused him disability 34% and he has incurred a sum of Rs.47,189/- towards medical expenses.

6. The Tribunal, taking note of the fact that the claimant was an agricultural coolie for 3 months he was left without income, has awarded Rs.12,000/- towards loss of earning during the treatment period fixing his income as Rs.4,000/- per month. For the Partial Temporary Disability Rs.40,000/- was awarded. On other heads including medical expenses based on the bills produced, a total sum of Rs.1,33,189/- was awarded with interest at 7.5% per annum.

7. The learned counsel for the appellant would submit that the claimant was hospitalised for 10 days and subsequently a plate was fixed, which incurred him future medical expense, besides he suffered the pain for all these periods with loss of amenities. Hence the compensation award has to be enhanced.

8. The learned counsel for the 2nd respondent/Insurance Company would submit that the Tribunal has taken note of pain and sufferings as well as the medical expenses incurred by him including future expense and has substantially compensated under those heads by awarding Rs.20,000/- for future operation and Rs.10,000/- for pain and sufferings. The Tribunal has taken note of the evidence of the doctor, who was examined as PW.2 had deposed the disability included 3% towards pain and sufferings. Therefore, there is no error in the assumption of loss.

9. The rival submission made by the respective counsels noted. Record indicate that the claimant was 64 years old at the time of accident. He has suffered a fracture injury, which was cured after treatment. He has spent for treatment around Rs.50,000/-. The Tribunal while assessing the disability has fixed 20% partial temporary disability as against 34% inclusive of pain and sufferings assessed by the doctor. On taking into consideration with the above facts, this Court is of the view that the compensation awarded to the appellant/claimant shall be enhanced as below:-



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Loss of earning	Rs. 12,000/-
Transport to Hospital	Rs. 5,000/-
Extra nourishment	Rs. 5,000/-
Future operation	Rs. 20,000/-
Medical expense	Rs. 47,189/-
For pain and sufferings	Rs. 20,000/-
Partial temporary disability	Rs. 40,000/-
Loss of amenity	Rs. 4,000/-
Total compensation	Rs.1,53,189/-

10. In the result, the award is enhanced from Rs.1,33,189/- to Rs.1,53,189/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The respondents 1 and 2 are directed to deposit the said enhanced award amount jointly and severally to the credit of M.C.O.P.No.296 of 2014 within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant is entitled to withdraw the same by filing appropriate petition before the Tribunal. Accordingly, the Civil Miscellaneous Appeal is partly allowed with costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal,
Subordinate Court, Tiruchengode.

+1cc to Mr.S.Arunkumar, Advocate SR.No.29430

C.M.A.No.1919 of 2016

PVS (CO)

GMV (08/09/2021)