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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 15.10.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1934 of 2016

G.Senthil.

... Appellant/Petitioner

/versus/

1. S.Ponni,
W/o.Sivalingam.

2. The Manager,
Shriram General Insurance Company Ltd.,
No.56, Thirumalai Pillai Road,
T.Nagar, Chennai

... Respondent/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2015 made in M.C.O.P.no.1128 of 2012 on the file of Motor Accident Claims Tribunal, (III Additional District Court) Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.S.Dhakshnamoorthy,

For R1 : exparte

JUDGMENT

(The Case has been heard through Physical Hearing)

Heard the Learned Counsel for the appellant and the Learned Counsel for the Insurance Company/respondent.

2. The facts of the case is that, on 10.09.2012, the appellant herein while riding his Suzuki motorcycle from Porur to Kundathur, met with an accident when the van bearing Registration No.TN-02-R-2741, came from opposite direction rash and negligently hit the two wheeler. In the said accident, the claimant sustained fractured injury on his right leg, right ankle, right wrist and thigh. Against the insurer of the offending vehicle and the vehicle owner, claim petition was



filed seeking Rs.8,00,000/- as compensation.

3. The claim petition was resisted by the Insurer on the ground that, the accident occurred due to negligence of the claimant, who tried to over take the Government Bus proceeding ahead of him. Since, the claimant has not properly followed the road rules, he invited the accident.

4. The Tribunal, after considering the rival submissions and the documents relied by the claimant, awarded a sum of Rs.3,06,867/- as compensation.

5. In the appeal, the claimant has taken a specific plea that the Tribunal has not adequately compensated for 49% disability sustained by the injured. Further, the Tribunal has erred in omitting a sum of Rs.1,40,000/- paid to the hospital as advance and submitted that under other non-conventional heads, the award of the Tribunal is very meager and it has failed to take note of the fact that the claimant undergone seven surgeries for the three fractures sustained in the accident.

6. The Learned Counsel appearing for the Insurance Company would submit that the Tribunal has rightly considered the plea of the claimant and has accepted the disability certificate given by doctor, who did not treat the claimant. Though, the percentage of injury was assessed on the higher side, the Tribunal has accepted the same and awarded Rs.2,000/- per percentage.

7. Insofar as, the medical expenses is concerned, the learned Counsel after perusing the records, namely the medical bills marked as Ex.P.6 series, would submit that the omission of Rs.1,40,000/- paid as advance has been wrongly excluded, while assessing the medical expenditure.

8. This Court, after considering the records finds that the Tribunal taking note of the fractures on the right leg, right wrist and thigh, had assessed the disability as 49% and awarded a sum of Rs.2,000/- per percentage.

9. The Learned Counsel appearing for the appellant would state that for the injury sustained in the year 2012, the Courts normally awards a sum of Rs.3,000/- per percentage. However, this Court is of the view that the award of Rs.98,000/- for the said injury under the head of disability is adequate and sufficient and in addition for the said injury, the claimant shall be entitled for an additional compensation of Rs.20,000/- for loss of amenity which is not been awarded by the Tribunal. Besides a sum of Rs.1,40,000/- towards medical expenses which has been omitted by the Tribunal has to be taken into account.



Thus, a sum of Rs.3,06,867/- awarded by the Tribunal is modified and enhanced to Rs.4,64,867/- with 7.5% from the date of filing the petition (06.12.2012) till the date of realisation.

Compensation under various heads	Award passed by this Court
Loss of earning capacity Rs.2,000 x 49%	Rs.98,000/-
Loss of amenity	Rs.20,000/-
Medical Bills	Rs.2,86,867/-
Transportation	Rs.5,000/-
Nutritious	Rs.5,000/-
Pain and Sufferings	Rs.50,000/-
Total	Rs.4,64,867/-

10. The award passed by the Tribunal for a sum of Rs.3,06,867/- is enhanced to Rs.4,64,867/- with 7.5% from the date of numbering the petition till the date of realisation. The 2nd respondent is directed to deposit the award amount with interest @ 7.5%, within a period of 12 weeks, from the date of receipt of the copy of this Order. On such deposit, the claimant is permitted to withdraw the same, on filing proper application.

11. Accordingly, this Civil Miscellaneous Appeal is Partly-Allowed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Motor Accident Claims Tribunal,
(III Additional District Court) Poonamallee.

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

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.34471

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.34526

C.M.A.No.1934 of 2016

CNR(CO)
CB(17/08/2021)