

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1849 of 2015

N.Murugan

...Appellant/Petitioner

Vs

1. Mr.M.S.Saravanan

2. SBI General Insurance Company Ltd.,
New No.64, Old No.149,
Ground and Mezzanine Floor,
Greames Road,
Chennai - 600 116.

(1st respondent was set ex-parte before
the Court below hence notice may
be dispense with)

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 05.02.2015 made in M.C.O.P.No.348 of 2013 on the file of the Motor Accident claims Tribunal, (III Additional District Court), Thiruvallur at Poonamallee.

For Appellant : Mr.M.Sivakumar

For Respondents : Mr.E.Rajadurai for R2
for M/s.M.B.Gopalan Associate
R1-exparte

J U D G M E N T

(The case has been heard through Video Conferencing)

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

2. The appeal is filed by the claimant/injured seeking for enhancement of compensation.

3. On 01.04.2013, at about 4 p.m., while the claimant was riding his two wheeler bearing Registration No.TN 20 CX 3829 near Senneerkuppam Sri Diesel Pump Service, Tiruvallur District, a tipper lorry bearing Registration No.TN K 7950, rash and negligently driven by its driver, hit the claimant from back and caused accident. In the accident, the claimants sustained fracture of left thigh bone and was admitted in the hospital for treatment of left distal femur fracture for five days as inpatient in Sundaram Medical Foundation, Chennai.

4. The claim petition was filed seeking compensation of Rs.7,03,000/- against the owner of Tipper lorry and the insurer. The liability of compensation of the award is denied by the Insurance Company through counter.

5. Before the Tribunal, the claimant and the doctor, who gave the Disability Certificate, were examined as P.W.1 and P.W.2. 10 exhibits were marked in support of the claim petition. The Tribunal awarded a sum of Rs.2,75,195/- assessing the disability at 45%.

6. In the appeal, it is contended that the accident occurred on 01.04.2013, during the relevant point of time, as per the judgment of the High Court in National Insurance Company vs Ramesh, compensation of Rs.3000/- was awarded for each percentage of disability. The Tribunal also not awarded future medical expenses. It has failed to consider the estimation Ex.P8.

7. Learned counsel for the respondent/Insurance Company would submit that the Tribunal had accepted the doctor's opinion regarding disability without considering the fact that the disability was given by a Doctor, who did not treat the claimant and for fracture of left distal femur and the disability is assessed for the part of the body and not for the whole body. Therefore, assessment of 40% disability is on the higher side. Regarding the future medical expenses, the learned counsel for the respondent would state that a mere assumption and there is no evidence to show that the claimant need any future medical treatment for the accident and therefore, the Tribunal has rightly denied to award any compensation towards future medical expenses based on Ex.P8.

8. On hearing the rival submissions made by the respective counsels, this Court finds that the award passed by the Tribunal requires enhancement to some extent and the same shall be as below:

Compensation under Various Heads	Award passed by this Court
Disability 45% (45X3000)	Rs.1,35,000/-
Pain and Suffering	Rs. 50,000/-
Medical Bills	Rs.1,14,345/-
Extra Nourishment	Rs. 5,000/-
Transport Expenses	Rs. 10,000/-
Loss of income for two months	Rs. 20,000/-
Loss of amenity	Rs. 10,000/-
Attender Charges	Rs. 5,000/-
Total	Rs.3,49,345/-

The said amount shall carry interest at the rate of 7.5% p.a. from the date of numbering the petition (15.04.2013) till the date of deposit. The respondent Insurance Company is directed to deposit the award amount within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall withdraw the same on petition.

6. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vri

To

The III Additional District Court,
Motor Accident claims Tribunal,
Thiruvallur at Poonamallee.

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Copy to

The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.C.Prabakaran, Advocate Sr.36714

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srg 27/04/2021



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