IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2879 of 2019

S.Vijayakumar
..Appellant/Petitioner

vs.

1.Alagupriya

2.ICICI Lombard General Insurance
Co Ltd.,
Chhtabhai Centre, No.140,
Nungambakkam High Road,
Chennai - 600 034. .. Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2018 in M.C.O.P.No.4914/2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai.

For Appellant	:	Mr.Nalliyappan R.
For Respondents	:	R1 - No appearance
		R2 - Mr.K.Poomalai

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 04.09.2018, made in M.C.O.P.No.4914 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claim Petitions) Small Causes Court, Chennai.

2. The claimant is the appellant, seeks enhancement of compensation.

3. The accident occurred on 12.06.2015 at about 21.30 hrs near Ambal Nagar Devar Hotal, JN 100 feet road, Guindy. J3, Guindy Traffic Investigation Police registered a case in Crime No.473/S2/2015 and due to the accident, the appellant/claimant sustained Fracture over right leg and other multiple injuries all over the body. The Claim Petition was filed. The Tribunal adjudicated the issues with reference to the documents as well as the evidences filed by the respective parties. As far as the negligence is concerned, the Tribunal relied on the oral evidence of PW1 as well as the documentary evidence of Ex.P1/copy of the FIR. In view of the fact that there was no contra evidence made available to rebut the oral evidence of PW1 as well as Ex.P1/FIR, the Tribunal arrived a conclusion that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent Car bearing Registration No.TN-10-AP-8065. Accordingly, the 2nd respondent/Insurance company is made liable to pay compensation to the appellant/claimant.

4. As far as the quantum of compensation is concerned, the learned counsel for the appellant/claimant reiterated that the Tribunal had reduced the disability percentage from 30% to 10% without any reason. Reduction of disability percentage is error apparent and therefore, the disability compensation is to be enhanced. This apart, the compensation granted under the head of Pain and Suffering is also on the lesser side and the same is to be enhanced. It is contended that the Tribunal has not granted adequate compensation and therefore, the appellant/claimant has chosen to file the present appeal.

5. The learned counsel appearing on behalf of the 2nd respondent/Insurance company disputed the contentions by stating that the Tribunal considered the nature of the injuries sustained by the appellant/claimant and reduced the disability fixed by the Doctor. Thus, there is no perversity as such and the compensation granted by the Tribunal is reasonable. Thus, the appeal is liable to be dismissed.

6. Considering the facts and circumstances, this Court is of the considered opinion that the negligence was rightly fixed on the 1st respondent/driver of the car and accordingly, the 2nd respondent is directed to pay compensation. Thus, fixing of liability on the 2nd respondent/Insurance company is in accordance with the principles and there is no perversity as such. As far as the quantum of compensation is concerned, undoubtedly, the disability compensation granted is on the lesser side. The appellant/claimant sustained fracture in his leg. He was working as Technician Grade-II and was aged about 38 years at the time of accident. Further, he was earning a monthly salary of Rs.25,000/- per month.

7. This being the factum, the compensation of Rs.30,000/- granted for 10% disability is not adequate and this Court is inclined to enhance the same. This apart, a sum of Rs.3,000/- is fixed for one percentage of disability. The accident occurred during the year 2015 and therefore, a sum of Rs.4,000/- for one percentage of disability would be proper and accordingly, the award passed by the Tribunal stands modified as detailed hereunder:

1.Permanent Disability (30%xRs.4,000/-)	:	1,20,000/-
2.Medical Expenses	:	10,868/-
3.Pain and Suffering	:	25,000/-
4.Transportation	:	2,015/-
5.Extra Nourishment	:	15,000/-
6.Attender Charges	:	15,000/-
7.Loss of Amenities	:	10,000/-
TOTAL	:	1,97,883/-

8. Thus, the appellant/claimant is entitled for a total compensation of a sum of Rs.1,97,883/- (Rupees One Lakh Ninety Seven Thousand Eight Hundred and Eighty Three only) along with the interest at the rate of 7.5% per annum.

9. Accordingly, the 2nd respondent/Insurance company is directed to deposit the entire award amount with accrued interest within a period of twelve(12) 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 with accrued interest by filing an appropriate application before the Tribunal and the payments are to be made through RTGS. The appellant/claimant is directed to pay the additional Court fee, if any, with reference to the enhanced compensation within a period of two(2) weeks from the date of receipt of a copy of this judgment.

11. Accordingly, the judgment and decree dated 04.09.2018 passed in M.C.O.P.No.4914 of 2015 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.2879 of 2019 is allowed in part. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
Special Sub Court No.1,
Motor Accidents Claims Petitions,
Small Causes Court, Chennai.

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

+1 cc to Mr.K.Poomalai, Advocate Sr.No. 30946

CMA No.2879 of 2019

SR(CO)
RMP(22/04/2021)