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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3344 of 2019

Murugan

... Appellant/petitioner

Vs.

1. Prakash

2. The National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai 2

... Respondents /Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 17.04.2018 in MCOP.No.637 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ponneri.

For Appellant : Mr. F. Terry Chella Raja

For Respondents : Mr. Vadivel, for R2
R1 - exparte

J U D G M E N T

Feeling unsatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Court, Ponneri, in MCOP No.637 of 2013 dated 17.04.2018, the claimant is before this Court seeking enhancement of compensation.

2. The case of the claimant in brief is as follows: -

On 09.07.2013, at about 4.30 p.m., while, the appellant/claimant was riding his motorcycle near Thantangkulam Road Junction to Shanmugadurai Firm, Madhavaram, a car belongs to the first respondent, which was insured with the second respondent, bearing Registration No.TN 03 E 4232, came in a rash and negligent



manner and dashed against the petitioner's motorcycle, in which, the petitioner sustained fracture in the left clavicle area and also sustained injuries in the left forearm. Immediately after the accident, he was taken Sri Kumaran Hospital for treatment and then shifted to Ess Vee Hospital, Chennai, and underwent surgeries. The appellant/claimant, was working in a saloon as a hairdresser, due to the injuries he suffered permanent disability and he is not able to continue his work and hence, he filed the claim petition seeking compensation of Rs.2,00,000/-.

3. The first respondent, who is the owner of the vehicle and the second respondent/Insurance Company remained exparte.

4. In order to prove the claim, the claimant examined himself as PW1 and marked as many as 8 documents, including the Accident Register Copy and the discharge summary. On the side of the respondents, neither any witness has been examined nor any documents was marked.

5. The Tribunal, after considering the materials available on records, came to a conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent car, which is insured with the second respondent and they are liable to pay the compensation. The Tribunal after perusing the Accident Register and Discharge summary has held that the appellant/claimant suffered injury in the left forearm and also fracture on his left clavicle, which are grievous in nature and awarded a sum of Rs.30,000/- towards disability and totally awarded a sum of Rs.41,000/- under the following heads:-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.
1	Compensation for injuries	30,000/-
2	Transport to Hospital	3,000/-
3	Extra Nourishment	3,000/-
4	Pain and Sufferings	5,000/-
	Total	41,000/-

Not feeling satisfied with the same, the Appellant is before this Court with this Appeal.

6. Heard the learned counsel for the appellant and the counsel appearing for the second respondent and perused the materials available on records carefully.



7. The claimant was working as a hairdresser in the saloon. At the time of accident, he was 31 years old. To prove the injuries suffered in the accident, the appellant/claimant filed the First Information Report, which was registered against the driver of the first respondent's car as Ex.P1, and the Accident Register as Ex.P2 and the Discharge summary issued by the Hospital as P.W.3. The respondents remained exparte before the Tribunal, from a perusal of the materials, the Tribunal has held that the petitioner/claimant suffered injuries, which is grievous in nature including a fracture on his left clavicle. However, the Tribunal simply awarded a sum of Rs.30,000/- towards disability. The learned counsel appearing for the appellant would submit that the claimant was a hairdresser and admittedly, he suffered a fracture in the clavicle, namely, collar bone, and due to that fracture, he suffered a partial permanent disability and he was not able to discharge his duties as before. However, without considering the same, the Tribunal only fixed a sum of Rs.30,000/-.

8. Considering the above submissions as the Tribunal itself has found that the injury suffered by him is grievous in nature and also considering the nature of duty, the claimant might have suffered serious disability as the collar bone has been fracture, even though, no doctor was examined to fix the actual disability suffered by the claimant. Considering medical records and other circumstances, this Court is of the view that the disability can be fixed at 30%. The accident took place in the year 2013, a sum of Rs.3000/- can be fixed for each paceurace. Hence, a sum of Rs.90,000/- is awarded towards the disability against Rs.30,000/- awarded by the Tribunal.

9. So far as the other heads, the Tribunal has rightly awarded compensation and there is no need to interfere with the same. Considering all the above circumstances, the award passed by the Tribunal is modified as follows:

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or reduced
1	Compensation Disability	30,000/-	90,000	enhanced
2	Transport to Hospital	3,000	3000	confirmed
3	Extra Nourishment	3,000	3000	confirmed



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Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or reduced
4	Pain and sufferings	5,000	5000	confirmed
	Total	41,000	1,01,000	enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.41,000/- is hereby enhanced to Rs.1,01,000/- (Rupees One Lakh one thousand only), together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs. No costs. So far as the payment of interest is concerned, the appeal was filed with the delay of 262 days and at the time of condoning the delay, this Court has held that the petitioner is not entitled for any interest for the enhanced amount for the delay period. Hence, the appellant/claimant is not entitled for any interest from 17.04.2018 till the filing of the appeal, i.e., 24.06.2019.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

The Motor Accidents Claims Tribunal,
Subordinate Judge,
Ponneri.



Copy to

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

+1cc to Mr.K.M.Ramesh, Advocate Sr.37209

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srg 01/09/2021