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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1833 of 2020

G. Kathar Hussain

... Appellant

Vs.

1. P. Manoharn

2. ICICI Lombard General Insurance Company Limited,
Arihant Plaza,
No.84 & 85, Wall Tax Road,
Chennai 600 003

... Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 15.10.2019 made in MCOP No.4488 of 2016 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant :Mr. K. Varadha Kamaraj

For Respondents :Mr.B. Sivakolappan
for R2
No Appearance for R1

J U D G M E N T

The claimant is before this Court with this appeal seeking for enhancement of compensation.

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

On 13.06.2016, at about 9.30 a.m., while the petitioner/claimant was riding his two wheeler in GST Service Road, from Chennai to Chengalpattu, near Urapakkam, another two wheeler bearing registration No.TN 73-X-0378, belongs to the first respondent, which was insured with the second respondent, came in a rash and negligent manner and dashed against the petitioner/claimant, in which, he sustained fracture in the leg. He was a carpenter and earning a sum of Rs.8000/- per



month. Due to the injury sustained in the accident, he suffered permanent disability and he was not able to perform his duty as before. Hence, claiming a sum of Rs.11 lakhs, a claim petition has been filed.

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3. The first respondent/owner of the offending vehicle remained exparte and the Insurance Company contested the claim petition on the ground that the accident has taken place due to the negligent driving of the claimant. That apart, they have disputed the injury suffered by the claimant in the accident and also disputed the monthly income of the claimant.

4. Before the Tribunal, the claimant examined himself as PW1 and as many as 7 exhibits have been marked. On the side of respondents, neither any witness nor any document has been marked. The Disability certificate issued by the Regional Medical Board is marked as Ex.C.1.

5. The Tribunal, after considering the evidence available on record, held that the accident has taken place due to the negligent driving of the two wheeler belonging to the first respondent. However, since the claimant did not produce his driving license, the Tribunal fixed 10% Contributory negligence on the part of the claimant. So far as the quantum of compensation is concerned, the Medical Board assessed the disability of the claimant at 20% and hence, the Tribunal fixed Rs.3000/- per percentage and awarded a sum of Rs.60,000/- towards disability and in respect of other heads, the Tribunal granted compensation as follows:

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.
1	Pain and sufferings	40,000
2	Extra Nourishment and Transportation expenses	40,000
3	Permanent disability	60,000
4	Medical Bills	2,581
5	Loss of amenities	45,000
6	Loss of Income for 4 months (8000 x 4)	32,000
7	Attender charges	1,000
8	Damages to clothes	1,000
	Total	2,21,581



The Tribunal, after deducting 10% towards contributory negligence, awarded a sum of Rs,1,99,500/-. Feeling aggrieved over the same, the claimant is before this Court, with this appeal.

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6. Heard both sides and perused the materials available on records carefully.

7. So far as the Contributory Negligence is concerned, the Tribunal has given a clear finding that the accident has taken place due to the negligent driving of the first respondent. However, the Tribunal fixed 10% contributory negligence on the claimant mainly on the ground that the claimant has not produced his driving license before the Tribunal. It is settled law that the onus is on the owner of the offending vehicle or Insurance Company to prove that the claimant is not having valid driving license at the time of the accident. Merely because the claimant has not produced the driving license, it cannot be held that he has also contributed to the accident. The Hon'ble Supreme Court in 2008(2) SCC 436 in the case of Sudhirkumar Rana /vs/ Surender Singh and others has held that the non-production of the driving license is not a reason to fix the negligence on the driver of the vehicle. In the above circumstances, the finding of the Tribunal fixing 10% Contributory negligence on the part of the claimant is set aside.

8. So far as the quantum of compensation is concerned, the Medical Board issued Certificate fixing disability at 20%. The accident has taken place in the year 2006 and the claimant is a carpenter and he suffered serious injuries in the leg and the disability suffered by the claimant is only a partial permanent disability and hence, he is not entitled for loss of future income. However, considering the age of the claimant as well as the nature of the injuries suffered, a sum of Rs.4000/- is fixed per percentage and the petitioner is entitled for a sum of Rs.80,000/- towards disability instead of 60,000/-. In respect of other heads, the Tribunal has rightly awarded compensation.

9. Considering all the above circumstances, the award passed by the Tribunal modified as follows:-

Sl No	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced
1	Pain and sufferings	40,000	40,000	confirmed



Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced
2	Extra Nourishment and Transportation expenses	40,000	40,000	confirmed
3	Partial Permanent disability	60000	80,000	enhanced
4	Medical Bills	2581	2,581	confirmed
5	Loss of amenities	45000	45,000	confirmed
6	Loss of Income for 4 months (8000 x 4)	32000	32,000	confirmed
7	Attender charges	1000	1,000	confirmed
8	Damages to clothes	1000	1,000	confirmed
9	Total	2,21,581	2,41,581 (rounded to Rs.2,42,000)	enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,99,500/- is hereby enhanced to Rs.2,42,000/- (Rupees Two Lakhs and Forty Two Thousand only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second 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 as apportioned by the Tribunal. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar



mrp

To:

The Motor Accidents Claims Tribunal,
V Small Causes Court,
Chennai.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras-104.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.41153

C.M.A.No.1833 of 2020

SSV(CO)
CB(13/09/2021)