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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 3280 of 2019

S.Siranjeevi

...Appellant

Vs.

1.J.Krishnan

2.United India Insurance Company Ltd.,
Silingi Building,
No.134, Greams Road,
Chennai ? 600 006.

...Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.2900 of 2014 dated 06.12.2018 on the file of the Motor Accident Claims Tribunal, III - Judge, Small Causes Court, Chennai.

For Appellant : Mr.R.Mohan Babu

For Respondents: R1 - Exparte

Mr.M.J.Vijayaraghavan for R2

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

This appeal has been preferred by the claimant seeking enhancement of the compensation pursuant to the injury suffered by him in the accident which occurred on 11.03.2014.

2. The appellant made a claim for a sum of Rs.40,00,000/- whereas the Tribunal awarded Rs.1,23,800/- with interest at 7.5% per annum from the date of the claim along with costs. Seeking enhancement of the same, the present appeal has been filed.

3. Before the Tribunal, the appellant examined himself as P.W.1 and the Doctor- P.W.2, who examined the injured appellant, marked certificate of permanent disability at 60%. He also marked Exs.P1 to P25. On behalf of the second respondent, neither any document was marked nor any witness has been examined. However, the claimant was referred to the Medical Board and it has issued disability certificate for 15% disability. The said certificate is also marked as Ex.P25.



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4. The learned counsel appearing for the appellant would submit that the appellant suffered the following injuries:-

- "(a) Fracture Distal 3rd of Left Humerous;
- (b) Fracture Lateral Condyle of Left Elbow;
- (c) Fracture 2nd and 3rd Ribs left side;
- (d) Fracture Right Elbow A/p Lateral
- (e) Fracture Right Elbow Malunited Humorous Condyle
- (f) Fracture Right Parasympsis Mandible
- (g) Fracture Left parasympsis Mandible?"

5. It is further submitted by the learned counsel appearing for the appellant that he was admitted as in-patient on two occasions - 12.03.2014 to 24.03.2014 and 25.03.2014 to 01.04.2014. The Tribunal ought to have considered the evidence of P.W.2 along with the disability assessed by the Medical Board. Thus, the appeal will have to be allowed.

6. The learned counsel appearing for the respondent/Insurance Company would submit that the salary taken by the Tribunal itself is doubtful. No substantial claim has been made with respect to the salary in the claim petition. The Tribunal rightly took into consideration the assessment of the Medical Board and hence the appeal will have to be dismissed.

7. The nature of the injury suffered by the appellant is not in dispute. From the facts narrated, the appellant suffered seven fractures. He was also treated as in-patient on two occasions. Further, he underwent series of surgeries during that period. The Tribunal, in our considered view, did not consider the evidence of P.W.2 in the right perspective. The report of the Medical Board is obviously a piece of evidence who fixed the disability as 15% which has to be seen contextually. Thus, we fix the functional disability at 7%. Accordingly, the loss of income is arrived at Rs.4,12,776/- ($18200 + 50\% \times 12 \times 18 \times 7/100$). We are deleting the disability as awarded by the Tribunal. By adding the other conventional heads as rightly awarded by the Tribunal, the total compensation is arrived at Rs.4,91,576/- which is rounded off to Rs.4,92,000/- with 7.5% interest from the date of the petition till the date of claim.

8. The respondent/Insurance Company is directed to deposit the enhanced compensation amount as awarded by this Court along with proportionate interest, less the amount, if any, already deposited to the credit of in M.C.O.P.No.2900 of 2014 dated 06.12.2018 on the file of the Motor Accident Claims Tribunal, III - Judge, Chennai within a period of eight weeks from the date of receipt of a copy of the judgment.



9. We also direct the Tribunal to transfer the same by way of RTGS to the claimant's bank account within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

10. In such view of the matter, the Civil Miscellaneous Appeal stands allowed in part. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

ssm
To

The Motor Accident Claims Tribunal,
III - Judge, Small Causes Court
Chennai.

+1 CC to Mr.R. Mohan Babu, Advocate sr 1275
+1 CC to Mr. M.J. Vijaya Raghavan, Advocate sr 1201.

C.M.A.No. 3280 of 2019

RR(CO)
SP(03/09/2021)