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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.No.308 of 2011

N.Rajan
S/o.Paulraj

.. Appellant/Claimant

Vs.

1.M.V.Sivaraj Karthikeyan
S/o.M.S.Venkiatachalam

2.United India Insurance Company Ltd.,
No.5, Big Bazaar Street,
Dharapuram,
Erode District - 638656

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.06.2010, made in M.C.O.P. No.182 of 2009, on the file of the Motor Accident Claims Tribunal-cum-Principal Sub Court, Coimbatore

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents : Mrs.I. Malar - R2
No Appearance - R1

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 04.06.2010, made in M.C.O.P. No.182 of 2009, on the file of the Motor Accident Claims Tribunal-cum-Principal Sub Court, Coimbatore.

2.The appellant herein is the claimant initially filed M.C.O.P. No.182 of 2009, on the file of the Principal Sub Court, Coimbatore, claiming a sum of Rs.5,00,000/- as compensation for



the injuries sustained by him in the accident that took place on 01.11.2008 at about 10.30 p.m.

3. According to the claimant/appellant herein, on 01.11.2008 at about 10.30 p.m while he was riding the motorcycle bearing Reg.No. TN-38-Y-7588 with one Krishnakumar as pillion rider towards north on the left side of the Kovai - Kalaipatti road,near Thanba @ Manikaraj Kadu, at the time the driver of the lorry TN-27-7009 drove the same towards south with high speed without light in a rash and negligent manner and dashed on the motorcycle. Due to the accident, the claimant and the pillion rider were fell down from the motorcycle and sustained grievous injuries. The appellant /claimant sustained grievous injuries with fracture on his right hand, right wrist, fracture and nerve cut in right leg and injuries on his forehead. Hence, he filed claim petition, claiming compensation for a sum of Rs.5,00,000/-.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry bearing Reg.No. TN-27-7009 belonging to the 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.1,80,500/- along with interest @ 7.5% per annum as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 04.06.2010, made in M.C.O.P. No.182 of 2009, the claimant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that at the time of accident, the claimant was 30 years old, hale and healthy. He was a Gym Master, running Gymnasium in the name of Samsan Power Gym at Periyanaickenpalayam and was earning not less than a sum of Rs.15,000/- per month. Due to the injuries and fractures, he was fully thrown out of his previous employment and unable to do any work. The claimant is the only breadwinner of his family, without his income, his family is suffering from heavy financial crisis.

7. The learned counsel for the appellant further submitted that the tribunal without considering the above aspects, awarded only a sum of Rs.1,80,500/- as compensation against the claim of Rs.5,00,000/- which is erroneous. Further the tribunal has erroneously fixed the disability at 30% and awarded a meagre amount of Rs.30,000/-toward disability, without considering the disability certificate issued by PW2 at 39.7%. In any event, the amounts awarded by the Tribunal under different heads, without considering the age and occupation of the injured



claimant are meagre and prayed for enhancement of the compensation.

8. On the other hand, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the doctor/PW2 who was examined before the tribunal, had not treated the claimant for the injuries. Hence, the tribunal has fixed the disability at 30% and awarded amount. Therefore, the compensation under the said head does not require any enhancement. It is further contended by the learned counsel that the total compensation granted by the Tribunal under different heads is excessive. The appellant has not made out any case and is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

9. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

10. From the materials on record, it is seen that it is the main contention of the appellant is with regard to the percentage of partial permanent disability fixed by the tribunal. A perusal of Ex.P2 & P3/Discharge Summaries issued by the KMCH Hospital, Coimbatore would reveal that the claimant had undergone two surgeries for the bone fracture and taken treatment as inpatient from 02.11.2008 to 06.11.2008 and from 19.12.2008 to 24.12.2008. PW2/ Dr.Senthilkumar in his evidence deposed that the claimant's right leg height is less than the height of the left foot by 1 cm and the thickness of the right arm is less than thickness of the left arm by 1 c.m . Further the claimant due to the surgery he find difficult to walk, to use the staircase and to sit on the floor. Considering the above disability and the genuineness of the Wound Certificate and Medical Prescriptions issued by the KMCH Hospital, Coimbatore, he assessed the partial permanent disability at 39.7 %. The tribunal observing the fact the said doctor had not treated the injured claimant, reduced the percentage of disability to 30%. The learned counsel for the Insurance company had also strongly objected the disability assessed by the doctor/PW2 before the tribunal and before this Court. But they have not produced any documents to disprove the statement made by PW2. Hence this Court, by considering the injuries and surgeries undergone by the claimant, is inclined to increase the disability and accordingly, the same is increased to 39%. Without changing the sum awarded by the tribunal per percentage (i.e Rs.1000/-), this Court enhances the sum awarded under the head 'Partial Permanent Disability' to Rs.39,000/- (39 x 1000). Like wise the sum awarded under the head Transport expenses and Extra Nourishment is also enhanced.



11. The sum awarded by the tribunal under the head 'Medical Expenses' is very much proved by Ex.P4, hence the same is confirmed. Though, the claimant claimed Rs.15,000/- per month towards earning, the tribunal by considering the age of the injured claimant has fixed Rs.5000/-per month and awarded loss of income for 6 months at Rs.30,000/-. The said amount is reasonable and the same is confirmed. It is seen from the award that the tribunal has not granted any amount for pain and suffering, attendant charges and loss of amenity, hence this Court is inclined to award some amount, accordingly a sum of Rs.10,000/-, Rs.20,000.- and Rs.10,000/- is granted respectively under the said heads.

12. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Partial Permanent Disability	30,000	39,000 (39x1000)	9,000
2.	Transport Expenses	1,500	5000	3,500
3.	Extra Nourishment	3,000	5,000	2,000
4.	Loss of Income during treatment period	30,000	30,000	...
5.	Shock and Mental Agony	10,000	10,000	--
6.	Medial Expenses	1,06,000	1,06,000	--
7.	Pain and Suffering	..	10,000	10,000
8.	Attendant Charges	...	20,000	20,000
9	Loss of Amenity	..	10,000	10,000
	Total	1,80,500/-	2,35,000/-	Enhanced by Rs.54500/-



13. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,80,500/- is enhanced to Rs.2,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.182 of 2009. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.54,500/-. No costs.

Sd/-
Deputy Registrar(LA)

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Sub Assistant Registrar

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To

1. The Sub Judge,
The Principal Sub Court,
(Motor Accident Claims Tribunal)
Coimbatore.

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

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.4104

C.M.A.No.308 of 2011

VG-II(CO)
HS(15/09/2021)