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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3212 of 2011

M.Sekar

... Appellant/Claimant

..Vs..

1. M.Ravi

2. The Branch Manager,
National Insurance Co. Ltd.,
No.1576, Visweshvariah Road,
P.B.No.34, Mndya - 571 401
Karnataka.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 25.01.2011 made in M.C.O.P.No.675 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.Prasanna for
Mr.M.Sriram

For Respondent No.2 : Mr.C.R.Krishnamoorthy

J U D G M E N T

Dissatisfied with the judgment and decree passed by the tribunal awarding compensation of Rs.1,34,183/- along with interest at the rate of 7.5% per annum, the claimant is before this Court for enhancement of compensation.

2. It is is the case of the claimant/appellant herein that on 30.10.2004 at about 4.00 p.m., the claimant/appellant herein met with an accident when he was walking on the left side of the road at Sunapura Village near to the gate within Hagalur



police station limit in Malavalli Taluk and Mandya District, a Maxi Cab van bearing Registration No.KA11 9559 belonging to the first respondent, insured with the second respondent was driven by its driver in a rash and negligent manner, at an uncontrollable speed, without adhering to the traffic rules and sounding horn, came in the opposite direction i.e. From Alagoor side towards Sathanur side and hit the appellant, resulting in the claimant sustained fracture on the right leg, right shoulder and multiple injuries. On a complaint, a criminal case was registered against the driver of the van in Cr.No.125 of 2004 under Sec.279, 337 of Hagalur Police station. The claimant filed a claim petitioner before the tribunal, claiming compensation of Rs.8,00,000/- for permanent disability and loss of earnings.

3 The Tribunal, based on the oral and documentary evidence Exs.P1 to P.8, has awarded a sum of Rs.1,34,183/- as total compensation payable by the second respondent/Insurance Company to the claimant under the following heads:

Heads	Amount in Rs.
Compensation for 45% disability (45 x Rs.2000)	90,000/-
Loss of Income	13,500/-
Pain and sufferings	20,000/-
Medical bills	3,683/-
Transport, expenses on attenders & extra nourishment	7,000/-
Total	1,34,183/-

4. Heard the learned counsel appearing for the appellant/ claimant and the learned counsel appearing for the second respondent/ Insurance Company and perused the materials available on record.

5. According to the learned counsel appearing for the appellant, the claimant sustained fracture on right thigh and right shoulder and multiple injuries in the aforesaid accident. He was admitted in Bowring Hospital, Bangalore and had taken treatment from 30.10.2004 to 26.11.2004. P.W.2 Dr.D.V.Gandhi who examined the appellant, upon analyzing X-ray and investigation chart, assessed the disability of the claimant as 60% permanent disability and gave Ex.A6 Disability certificate to the claimant



and deposed before the Court below to support the claim of the appellant for the injuries sustained by him. The appellant also produced documents Ex.A1 to A5. However, the tribunal without considering the evidence of P.W.2 and Ex.A6 disability certificate, fixed the disability as 40% permanent disability and awarded Rs.2,000/- per percentage which comes to Rs.90,000/- towards permanent disability. According to the counsel for the appellant, the said finding of the tribunal is irrational, unfounded and the same has to be modified. Apart from that the tribunal has awarded compensation towards pain and sufferings, medical bills, etc. and the tribunal also awarded compensation for loss of income for a period of three months at the rate of Rs.4,500/- x 3 = Rs.13,500/-. Therefore, the appellant is entitled for enhancement of compensation awarded by the tribunal.

6. Per contra, the learned counsel appearing for the Insurance Company stoutly objected the contention of the learned counsel appearing for the appellant, by stating that the Court below rightly fixed the compensation amount to the appellant, based on the oral and documentary evidence led by the appellant. Therefore, there is no warrant to interfere with the award passed by the tribunal.

7. Firstly, there is no dispute with regard to liability is concerned. The dispute is only with regard to quantum of compensation awarded by the tribunal. Therefore, insofar as the liability is concerned, the award of the tribunal is confirmed. Admittedly, the appellant sustained fracture in the right leg for which the Doctor who examined the appellant assessed the disability as 60% permanent disability. Doctor who deposed before the tribunal as P.W.2, upon analyzing Ex.A2, A3, A5, A7 and A8 assessed the disability of the appellant as 60%. This Court has gone through the evidence of P.W.2. P.W.2 during cross examination, has admitted that the claimant sustained fracture on the right thigh bone for which P.W.2 fixed disability at 40% and 10% disability on the clavical bone. Therefore, P.W.2 Dr. Gandhi himself admitted that he assessed 40% disability on the right leg. Based on the said evidence of P.W.2, the Court below has rightly fixed the disability of the appellant as 45%. The appellant has not placed any other materials in support of his contention that the appellant has sustained 60% disability. Therefore, there is no reason to interfere with the said finding of the tribunal.

8. Insofar as the other heads are concerned, according to the learned counsel for the appellant, tribunal has awarded meagre amount which requires enhancement. To that



extent, the compensation awarded by the tribunal is modified on various heads and awarded as follows:

Heads	Compensation awarded by the Tribunal Rs.	Compensation enhanced/ awarded by this Court (Rs.)	Difference Amount in Rs.
Disability 45%x2000	90,000/-	90,000/-	--
Loss of Income	13,500/-	13,500/-	--
Pain & suffering	20,000/-	20,000/-	--
Medical bills	3,683/-	3,683/-	--
Transport, expenses on attenders & extra nourishment	7,000/-	5,000/- + 10,000/- + 5,000/-	13,000/-
Loss of amenities	--	10,000/-	10,000/-
Total :	1,34,183/-	1,57,183/-	23,000/-
Rounded of		1,57,000/-	

The compensation awarded by the tribunal is enhanced to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

9. The second respondent/Insurance company is directed to deposit the award amount of Rs.1,57,000/- (Rupees one lakh fifty seven thousand only) after deducting the amount if already deposited before the tribunal, along with interest at the rate of 7.5% p.a. from the date of petition till realization before the tribunal within a period of twelve weeks from the date of receipt of copy of the order. On such deposit being made by the respondent Insurance company, the appellant/claimant is permitted to withdraw the amount by filing appropriate application.

10. In the result, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar (CS)

// True Copy//

Sub Assistant Registrar

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To

1. Motor Accidents Claims Tribunal
Chief Judicial Magistrate,
Krishnagiri.

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

+1cc to Mr. Mukund Pandian, Advocate, S.R.No.4774

Civil Miscellaneous Appeal No.3212 of 2011

MG (CO)
SU (11/08/2021)