



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.2475 of 2012

Alphonsa Vincent

... Appellant/Petitioner

Versus

1. K.A.Dayanandini

(R1 was set exparte in the trial court)

2. The Oriental Insurance Co.Ltd.,

No.251, I Floor, Arcot Road,  
Vadapalani, Chennai - 600 026

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.10.2010 made in MACT.OP.No.1622 of 2008 on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai

For Appellant : Mrs.V.Suguna

for M/s.C and K Law Firm

For Respondents

For R2 : Mr.M.J.Vijaya Raghavan

#### J U D G M E N T

This appeal has been laid as against the judgment and decree dated 28.10.2010 made in MACT.OP.No.1622 of 2008 on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai, thereby awarded the compensation to the tune of Rs.1,15,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 27.02.2008, when the petitioner was standing in front of the Kedhar Hospital,



Mukalivakkam Main Road, the first respondent drove his two wheeler in a rash and negligent manner and hit the petitioner, due to which the petitioner sustained fracture on his right leg. He also sustained severe head injury, abrasions over left hand, lacerated injuries over right leg and multiple injuries all over the body. Immediately, he was taken to Kedhar Hospital and admitted as inpatient. He had taken treatment till 01.03.2008. His disablement was assessed at 50%. Therefore, the claimant filed claim petition seeking compensation at Rs.6,00,000/-.

4. Resisting the same, the second respondent filed counter stating that the accident occurred only on the rash and negligence of the claimant and not on the negligent driving of the first respondent. Therefore, the second respondent is not at all liable to pay any compensation as claimed by the claimant and sought for dismissal of the claim petition.

5. On the side of the claimant, examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.9. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.1,15,000/- as compensation. Aggrieved by the same, the claimant came forward with the present appeal for enhancement of the award.

6. The learned counsel appearing for the claimant submits that the petitioner sustained fracture on his both bone on right leg and also head injury. Doctor was examined as PW2 and he assessed the claimant at 50% partial permanent disability. Even then, the Tribunal without any reason, reduced the disablement to 35% and only awarded Rs.42,000/-. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent would contend that the disability sustained by the petitioner is only partial and because of his disablement, his avocation was never disturbed and he continues his job. Therefore, the Tribunal rightly awarded the compensation and prayed for dismissal of the present appeal.

8. Heard Mrs.V.Suguna, learned counsel appearing for the appellant / claimant and Mr.M.J.Vijaya Raghavan, learned counsel appearing for the second respondent herein.

9. The claimant met with an accident on the rash and negligent driving of the two wheeler by the first respondent on 27.02.2008. Due to the said accident, the claimant sustained both bone fracture over right leg, severe head injury, abrasions



over left hand, lacerated injuries over right leg and multiple injuries all over the body. Immediately, he was taken to Kedhar Hospital and treated as inpatient. He had undergone surgery on his right leg and he also incurred medical expenses to the tune of Rs.42,000/-. PW2 assessed disablement of the petitioner at 50%. However, it is only partial permanent disability and as such the Tribunal rightly had taken as 35%. However, the Tribunal awarded only a sum of Rs.1,200/- per percentage. As such this Court is inclined to enhance the same by granting Rs.2,000/- per percentage.

10. Accordingly the compensation awarded by the Tribunal stands modified as under :-

| Sl. No. | Head                                                              | Amount awarded by the Tribunal | Amount awarded by this Court |
|---------|-------------------------------------------------------------------|--------------------------------|------------------------------|
| 1       | Loss of income for two months at the rate of Rs.3,000/- per month | Rs.6,000/-                     | Rs.6,000/-                   |
| 2       | Transportation as per Ex.P6                                       | Rs.1,500/-                     | Rs.1,500/-                   |
| 3       | Extra nourishment                                                 | Rs.5,000/-                     | Rs.5,000/-                   |
| 4       | Damage to clothes                                                 | Rs.500/-                       | Rs.500/-                     |
| 5       | Medical expenses                                                  | Rs.42,000/-                    | Rs.42,000/-                  |
| 6       | Cost of attendant                                                 | Rs.3,000/-                     | Rs.3,000/-                   |
| 7       | Pain and suffering                                                | Rs.15,000/-                    | Rs.15,000/-                  |
| 8       | Disability of 35% at the rate of Rs.1,200/- per disability        | Rs.42,000/-                    | Rs.70,000/-                  |
|         | Total                                                             | Rs.1,15,000/-                  | Rs.1,43,000                  |

11. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.1,15,000/- to Rs.1,43,000/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The second respondent herein / insurance company is directed to deposit the award amount, less the amount, if any,



already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the appellant / claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) The appellant/claimant is not entitled to any interest for the condoned delay (default) period, if any.

(vi) The appellant / claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

Sd/-  
Assistant Registrar(CS )

//True Copy//

Sub Assistant Registrar

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To

1. The III Judge,  
Motor Accidents Claims Tribunal,  
Small Causes Court, Chennai
2. The Section Officer,  
V.R.Section,  
Madras High Court,  
Chennai.

+1CC to Mr.C.Munusamy, Advocate, Sr.No.24340

C.M.A.No.2475 of 2012

RSI (CO)  
K.RK. (09.11.2021)