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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.NO.450 OF 2011

T.Periyasamy

... Appellant/Petitioner

..Vs..

1. S.Marappan
S/o.Chellappa Gounder

2. The United India Insurance Co. Ltd.,
Branch Office,
146, N.KUmar Complex,
Tiruchengode - 637 211.

... Respondents/Respondents

PRAYER:-

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 08.12.2009 made in M.C.O.P.No.81 of 2007 on the file of Principal Sub Judge, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.I.Syed Sibghatulla

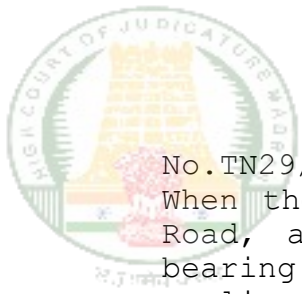
For Respondent No.2 : Ms.I.Malar

Respondent No.1 : Notice Served
No Appearance

JUDGMENT

Dissatisfied with the judgment and decree, dated 08.12.2009 in M.C.O.P.No.81 of 2007 passed by the tribunal awarding compensation of Rs.1,44,190/- along with interest at the rate of 7.5% per annum, the claimant are before this Court for enhancement of compensation.

2. It is the case of the claimant/appellant herein that on 23.1.2006 the claimant was on duty in bus bearing registration



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No.TN29/N 1641 which was plying between Salem and Bangalore. When the bus was reached near Paiyur, on Krishnagiri Dharmapuri Road, at 06.15 pm, a bus came from Krishnagiri to Dharmapuri bearing Reg.No.TN30-F-9396 driven by its driver in a rash and negligent matter, without following traffic rules, dashed against the claimant's bus. Due to this accident, the claimant sustained severe and multiple fractures in his both legs and abrasions. Hence, for the injuries sustained by him, he filed a claim petition, claiming compensation of Rs.10,00,000/-. The tribunal based on the evidence and documents, has awarded a sum of Rs.1,44,190/- as compensation payable by the 2nd respondent. Challenging the said compensation, the claimant is before this Court for enhancement.

3. On the side of the claimants, two witnesses P.W.1 & P.W.2 were examined and thirteen documents Ex.P1 to P13 were marked. On the side of the respondents, no witnesses were examined and no documents were marked.

4. The learned counsel appearing for the appellants submitted that the tribunal has accepted the disability at 35% assessed by the doctor/PW2 as awarded only a sum of Rs.35,000/- by fixing Rs.1000/- per percentage, which is very meagre. Further the tribunal has wrongly calculated the compensation for Medical Bills as Rs.62,250/- instead of 65,250/-. The learned counsel for the appellant submitted that due to the said accident, the appellant is not able to climb the stairs or stand continuously and sit on the floor and is not able to do his job as before the accident. The tribunal has not considered the said aspect and not awarded any amount towards loss of earning capacity. The compensation awarded under other heads are also inadequate, hence seeks enhancement of compensation.

5. The learned counsel appearing for the 2nd respondent/Insurance Company objected for enhancement of compensation and submitted that based on the evidence and documents, the tribunal has awarded compensation to the claimants, which is fair and reasonable and does not require any modification by this Court.

6. Heard the learned counsel appearing for the appellants, the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

7. From a perusal of the documents, PW2/Doctor who assessed the disabilities of the claimant has stated that he sustained bone fracture in the said accident, due to which, he cannot sit or stand properly and he cannot drive vehicles as before. The claimant has also undergone two surgeries for the fracture in his leg. The X-ray taken by the doctor was marked as Ex.P12. The doctor assessed the disability at 35%, the disability



certificate issued by the doctor was marked as Ex.P10. It is clear that the appellant had sustained severe fracture injuries, hence, it would be proper to enhance the compensation under the head permanent disability, enhancing Rs.2000/- per percentage. Accordingly, for 35% disability, a sum of Rs.70,000/- is granted under the said head.

8. It is contended by the learned counsel for the appellant that the appellant had marked Ex.P9/Medical Bills for Rs.51,750 & Ex.P13/Medical Bill for Rs.13,500/-. The tribunal has accepted the said bills and granted a sum of Rs.62,250/- instead of 65,250/- towards Medical Bills. Though it is wrongly mentioned in the discussion paragraph, while calculating the total compensation, the tribunal has rightly taken a sum Rs.65,250/- as claimed by the appellant herein. This Court also confirms the said amount under the head 'Medial Bills'. The tribunal has observed that in view of the injuries and treatment taken by the claimant/appellant as inpatient for the surgeries undergone by him, after deducting the Medical Leave availed from the department, he could have suffered loss of income at least for three months. Hence by considering the net income from the salary certificate of the year 2006 which shows Rs.7647/-, the tribunal has calculated the loss of income for three months, which comes to Rs.22,941/-. According to this Court, the said compensation is fair and reasonable. Considering the injuries and the period of treatment, this Court is inclined to enhance the compensation for 'Pain and Suffering' from Rs.15,000/- to Rs.20,000/- and also grants compensation under the heads 'Loss of Amenities' at Rs.10,000/- and for Attendant Charges at Rs.10,000/-. The sum awarded under the heads Transport expenses and Extra nourishment are confirmed. Thus the award of the tribunal is modified by this Court as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Permanent Disability	35,000	70,000/- (2000 x 35)
Pain and Suffering	15,000	20,000
Attendant Charges	..	10,000
Loss of Amenities	..	10,000
Loss of Income for three months	22,941/-	22,941
Medial Bills	65,250/-	65,250



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Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Extra Nourishment	5,000	5,000
Transport Expenses	1,000	1,000
Total	1,44,190 /-	2,04,191 (rounded of to Rs.2,04,000/-)

9. In view of the above modification, the compensation awarded by the tribunal at Rs.1,44,190/- is enhanced to Rs.2,04,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

10. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant are permitted to withdraw the compensation as modified by this Court along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is partly allowed to the above extent. No costs.

Sd/-
Assistant Registrar

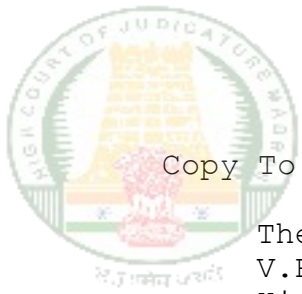
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Sub Assistant Registrar

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To

The Principal Sub Judge,
(Motor Accidents Claims Tribunal),
Salem.



Copy To:-

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

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+1cc to Mr.I.Syed Sibghatulla, Advocate, S.R.No.12281

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.12440

C.M.A.NO.450 OF 2011

GJ (CO)

PBS/10/11/2021

PBS/03/12/2021