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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3148 of 2012

R.Abdul Jabber @ Jabar Basha

...Appellant/ Claimant

..Vs..

1.D.Jayaganthan

2.The United India Insurance Co. Ltd.,
No.134, Greams Road, HUB,
Siningi Buildings, IV Floor,
Chennai - 6.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 19.09.2008 made in M.C.O.P.No.1523 of 2004 on the file of V Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr.Ponnusamy for
M/s.Anand & Suryas

For Respondent No.1 : Notice unserved

For Respondent No.2 : Mr.D.Bhaskaran

J U D G M E N T

Dissatisfied with the judgment and decree, dated 19.9.2008, passed by the Motor Accident Claims Tribunal awarding compensation of Rs.1,16,000/- 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 24.10.2003 at about 2.05 p.m., the claimant/appellant



herein met with an accident when he was travelling as a passenger in the share auto bearing registration No.TN-05-E 6598 on Thiruvalluvar Salai and L.B. Road junction, Chennai proceeding from east to north, the driver of the above share auto drove the vehicle in a rash and negligent manner and at that time, an unknown motorcycle came across the same junction and just to avoid a mishap with the said motorcycle, the share auto drive applied sudden brake, as a result, the share auto was overturned and the appellant sustained grievous injuries. He took treatment at Govt. Royapettah hospital, Chennai. The appellant claimed a total compensation of Rs.2,50,000/- from the respondents.

3 The Tribunal, based on the oral and documentary evidence Exs.P1 to P.10, has awarded a sum of Rs.1,16,000/- as total compensation payable by the second respondent/Insurance Company to the claimant/appellant under the following heads:

Heads	Amount in Rs.
Permanent disability 55%	55,000/-
Loss of Income for a period of 10 months (3000 x 10)	30,000/-
Pain and suffering	20,000/-
Extra Nourishment	3,000/-
Medical expenses	5,000/-
Transportation	2,000/-
Damage to clothes	1,000/-
Tota	1,16,000/-
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4. Heard the learned counsel appearing for the claimant/ appellant 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 tribunal has awarded a total compensation of Rs.1,16,000/- towards 55% permanent disability suffered by the appellant and on various other heads. According to the learned counsel appearing for the appellant, appellant sustained fracture of left tibia due to the accident. Disability certificate Ex.P9 and X-ray Ex.P10 were produced before the tribunal. P.W.2 Dr.Mathiazhagan deposed before the tribunal that he assessed that the appellant sustained 55% permanent disability. According to the appellant, he had taken treatment from 24.10.2003 to 23.10.2004 as inpatient at Govt Royapettah



hospital and he also produced discharge summary Ex.P1. Again, he had taken treatment as inpatient at Govt. Royapettah hospital from 23.4.2004 and 24.4.2004 for removal of implant and thereafter, he had taken continuous treatment in the said hospital. Therefore, the appellant suffered more than one year after the injuries sustained by him in the said accident. According to the appellant, the appellant was prevented from doing regular work for a period of one year. The tribunal has awarded a meagre amount to the appellant under various heads, viz., permanent disability, pain and suffering, Transportation, Extra Nourishment, Damages to clothes. Therefore, the compensation awarded by the tribunal requires substantial enhancement.

6. Per contra, the learned counsel appearing for the Insurance Company would submit that based on the oral and documentary evidence, the tribunal has rightly determined the compensation to the appellant. P.W.2 assessed that the appellant sustained 55% permanent disability and the tribunal awarded Rs.1000/- x 55 = 55,000/- to the appellant towards permanent disability. Apart from that the tribunal also awarded reasonable compensation under various heads. Therefore, there is no warrant to interfere with the award.

7. Admittedly, the appellant sustained fracture in the left tibia for which the Doctor who examined the appellant assessed the disability as 55% permanent disability. According to the counsel appearing for the appellant, tribunal ought to have fixed Rs.2000/- per percentage instead of Rs.1000/- towards permanent disability. Considering the year of the accident took place and the decision of this Court as well as the decision of the Hon'ble Supreme Court, this Court is of the view that percentage fixed by the tribunal requires enhancement of the said amount by fixing Rs.1500/- per percentage. In respect of the loss of earning during the period i.e. 24.10.2003 to 23.10.2004, the appellant had taken treatment in the hospital. According to the counsel for the appellant, appellant had taken treatment for a period of 12 months, tribunal has granted compensation for a period of 10 months only for loss of earning. This Court is of the view that the appellant is entitled for 12 months period for the loss of earning.

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:



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Heads	Compensation awarded by the Tribunal Rs.	Compensation enhanced/ awarded by this Court (Rs.)	Difference Amount in Rs.
Disability 55% x 1500/-	55,000/-	82,500/-	27,500/-
Loss of Income 3000 x 12	30,000/-	36,000/-	6,000/-
Pain & suffering	20,000/-	30,000/-	10,000/-
Transportation	2,000/-	5,000/-	3,000/-
Extra nourishment	3,000/-	10,000/-	7,000/-
Medical expenses	5,000/-	5,000/-	--
Damages to clothes	1,000/-	1,000/-	--
Loss of amenities	--	25,000/-	25,000/-
Attender charges	--	10,000/-	10,000/-
Total :	1,16,000/-	2,04,500/-	88,500/-

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.2,04,500/- (Rupees two lakh four thousand and five hundred 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, within a period of eight weeks from the date of receipt of copy of the order. On such deposit being made by the second respondent/Insurance company, the appellant 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-V)

//True Copy//

Sub Assistant Registrar

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To

1.The V Small Causes Court
(Motor Accidents Claims Tribunal) Chennai.

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GJ(CO)
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