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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA No.318 of 2012

P.Ramachandran @ Chinnapillai ... Appellant/Petitioner

..vs..

1. A.Raja,
S/o Andisamy,

2. P.Selvaraj,
S/o Palanisamy,

3. The Branch Manager,
ICICI Lombard General Insurance Co. Ltd,
Head Office,
Zenith House, Keshavrao Khadye Marg,
Opp. Race Course, Mahalakshmi,
Mumbai-400034.

... Respondents

(Respondents 1 & 2 were set exparte before the lower court.
Hence notice in respect of the respondents 1 & 2 may be
dispensed with)

Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the judgment and decree dated 10.08.2011 made in
M.C.O.P.No.134 of 2008, on the file of the Motor Accidents
Claims Tribunal, Additional District Judge and FTC-1, Erode.

For Appellants : Mr.P.Nalliyappan

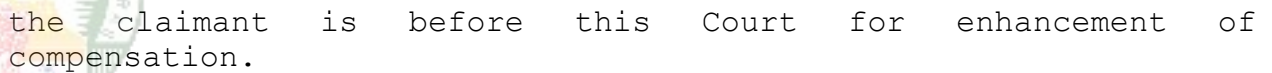
For Respondent No.3 : Mrs.Sreevidhya

For Respondent No.1 & 2 : Notice unserved

J U D G M E N T

The matter is heard through "Physical Hearing".

Dissatisfied with the judgment and decree, dated
10.08.2011, passed by the tribunal awarding compensation of
Rs.1,35,700/- along with interest at the rate of 7.5% per annum,



6. On the other hand, the learned counsel appearing for the 3rd respondent /insurance company denied the mode of



accident as narrated by the appellant/claimant and also denied the negligence on the part of the driver of the insured vehicle. Furthermore, the amount awarded under each heads by the tribunal are based on the settled principles of law laid down by the Hon'ble Supreme Court and this Court. Hence the quantum arrived at by the Tribunal does not require any interference by this Court.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 3rd respondent/ Insurance Company and perused the materials available on record.

8. The main contention of the appellant is that the tribunal has not awarded adequate amount for the disability sustained by the claimant. It is seen from the records, the doctor was examined as PW2, he deposed that due to the said accident, the claimant had sustained bone fracture in his right femur and undergone surgery. The doctor also deposed that initially a rod was fixed in his right femur and later the said rod was removed. Due to the said surgery length of his right leg was reduced by 4 cms. PW2/Doctor after detailed assessment of the disabilities, issued the Partial Permanent Disability Certificate/Ex.A11 mentioning the disability at 48.6%. The tribunal has accepted the said disability certificate issued by the doctor/PW2 and granted the compensation by fixing Rs.2000/- per percentage under the head Partial Permanent Disability at Rs.97,200/-. Since, the tribunal has considered and accepted the entire disability assessed by the doctor/PW2 and granted compensation, the appellant/claimant cannot claim compensation beyond the disability assessed by the doctor. Therefore, the contention of the learned counsel for the appellant with regard to considering the disability at 100% is not sustainable and the same is rejected.

9. Insofar as the compensation awarded under other heads are concerned, the tribunal by observing the fact that due to the injuries, the claimant would have taken rest at least for a period of three months, awarded Rs.13,500/- fixing Rs.4500/- per month. The said compensation under the head 'loss of income during treatment period' is not excessive, therefore the same is confirmed. It is seen from the award that the tribunal failed to grant compensation for transport expenses and attendant charges. Since the disability and injuries were not disputed, it would be appropriate to grant some reasonable amount under the said heads. Accordingly, a sum of Rs. 5000/- towards 'Transport Expenses' and a sum of Rs.20,000/- towards 'Attendant Charges' are granted. Likewise, the sum awarded by the tribunal under the head 'Pain and Suffering' and Extra Nourishment' is enhanced to Rs. 25,000/- and Rs.10,000/- respectively. Thus, the compensation under various heads modified by this Court is as



follows;

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Partial Permanent Disability	97,200	97,200
2	Pain and Suffering	20,000	25,000
3	Transport Expenses	...	5,000
4	Attendant Charges	...	20,000
5	Loss of income during the treatment period	13,500 (4500 x 3)	13,500
6	Extra Nourishment	5000	10,000
	Total	1,35,700/-	1,70,700/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed, by enhancing the total amount of compensation from Rs.1,35,700/- to Rs.1,70,700/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

11. The 3rd respondent/Insurance Company shall deposit the entire enhanced compensation amount, as modified by this Court, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit, the appellant /claimant is permitted to withdraw the compensation as modified by this Court along interest, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge (FTC-I)
(Motor Accidents Claims Tribunal)
Erode.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mrs.Sree Vidhya, Advocate, S.R.No.7538

CMA.No.318 of 2012

SPD(CO)
SU(16/11/2021)