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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.929 of 2015

M. Rajendran

...Appellant

Vs.

1. Apollo Polytechnic College,
No.4, Aiswarya Complex,
Duraismy Road,
T.Nagar, Chennai - 17.

2. The ICICI Lombard General Insurance Co. Ltd.,
Harihant Plaza,
No.84/85, Walltax Road,
Chennai - 79.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2014, made in M.A.C.T.O.P.No.2974 of 2011 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr. F. Terry Chellaraja

For R1 : Ex-parte

For R2 : Mr. Siva Kollapan

J U D G M E N T

The award dated 24.09.2014 passed in M.C.O.P.No.2974 of 2011, is under challenge in the present civil miscellaneous appeal. The claimant is the appellant and the appeal is filed seeking enhancement of compensation.

2. The brief facts leading to the filing of the appeal are as follows:

(i)The appellant sustained injuries as a result of an accident caused by a bus bearing Registration No.TN-36-E-0036 owned by the first respondent and insured with the second respondent. The date of the accident was on 20.06.2011. At the



time of the accident, the injured claimant Rajendran was 63 years old. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.2974 of 2011 seeking compensation of Rs.6,00,000/-.

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(ii) The Motor Accident Claims Tribunal, by its Award dated 24.09.2014 in M.C.O.P.No.2974 of 2011 directed the second respondent to pay the appellant a sum of Rs.1,72,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard the learned counsel for the appellant and the learned counsel for the second respondent.

5. The factum of the accident; the manner of the accident and negligence on the part of the driver of the first respondent which was insured with the second respondent / ICICI Lombard General Insurance Company Limited are not in dispute and hence, the finding rendered in this regard by the Motor Accident Claims Tribunal are hereby confirmed.

6. On perusal of P.W.2 Dr. J.R.R. Thiagarajan who examined the claimant had noticed he has sustained fracture of right ulna bone for which plate and screws fixed and fracture of right 1st meta tarsal bone, now the fracture is mal united and muscles hexion elbow is 80 degree, proration supination 30 degrees limited for which assessed 30%, fracture of 1st Meta carpal bone is mal united and hand flexion right thumb and he find difficulty in doing work and carrying weight with right hand for which assessed 15% in total assessed 45% as partial permanent disability and issued Ex.P9 disability certificate.

7. P.W.2 / Doctor admits during cross-examination, the claimant can sit and do his work and there may be variation of 5% between Doctors in assessing the disability. Further, P.W.2 has not filed X-ray report in support of his assessment. Under such circumstances, the disability assessed by P.W.2-Doctor is on the higher side. However, considering the fracture of right ulna and fracture of right 1st metacarpal bone and surgery underwent by him, the disability of the claimant is fixed as 40% by the Tribunal.

8. On perusal of Ex.P3 discharge summary coupled with Ex.P9 disability certificate and evidence of P.W.2 Doctor, I find that the fracture is now mal united and the muscle hexion elbow is 80 degree only and it is restricted 30 degrees. Furthermore,



the fracture of first metacarpal bone is mal united and hand flexion right thumb is very difficult and hence I find that the disability assessed by the Doctor as 45% may be taken up for.

9. The learned counsel appearing for the second respondent / Insurance Company would submit that without marking the X-ray report, the Doctor had arrived at the conclusion. However, I am unable to uphold the said contention for the reason that Ex.P.10 X-ray was filed before the trial Court and the evidence of P.W.2 as per the records shows that the Doctor has deposed based upon the X-ray and had come to the opinion and hence the submissions made by the learned counsel that P.W.2 has not filed any X-ray report stands negatived in view of Ex.P.10 marked before the trial Court.

10. Taking into consideration, the date of the accident and the nature of the injuries, this Court is inclined to enhance Rs.3,000/- per percentage of disability (45x3000) = 1,35,000/-. In respect of all other heads, I find it is more or less just and reasonable award. Accordingly, the compensation award in M.C.O.P.No.2974 of 2011 is hereby stands modified to the limited extent as stated supra.

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,72,000/- to Rs.2,27,000/- the details of which read as follows:

Sl. No.	Heads	Tribunal Award	High Court	MODIFIED/ CONFIRMED
1	Transportation and Extra Nourishment	Rs.25,000/-	Rs.25,000/-	Confirmed
2	Damage to Clothes	Rs.500/-	Rs.500/-	Confirmed
3	Attender Charges	Rs.2,000/-	Rs.2,000/-	Confirmed
4	Medical Expenses	Rs.14,500/-	Rs.14,500/-	Confirmed
5	Disability of 40% at the rate of Rs.2000/- per percentage	Rs.80,000/-	Rs.1,35,000/- (45% at the rate of Rs.3000/- per percentage)	Modified
6	Loss of Amenities	Rs.25,000/-	Rs.25,000/-	Confirmed
7	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
	Total	Rs.1,72,000/-	Rs.2,27,000/-	



12. Accordingly, the modified compensation of Rs.2,27,000/- is to be paid to the appellant along with the interest from the date of accident. The second respondent / ICICI Lombard General Insurance Co. Ltd., is directed to deposit the modified award amount of Rs.2,27,000/- along with the interest, within a period of eight weeks, from the date of receipt of copy of the judgment and on such deposit, the appellant-claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 24.09.2014, passed in M.C.O.P.No.2974/2011, stands modified and C.M.A.No.929/2015 stands allowed in part. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

AT

To

1. The Motor Accidents Claims Tribunal,
V Court of Small Causes, Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.M.Malar, Advocate, S.R.No.18081

C.M.A.No.929 of 2015

RGN[co]
NSK 02/12/2021