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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3492 of 2019

(Through Video Conferencing)

Suresh ... Appellant/ Petitioner

Vs.

1.Jamaludeen

2.The Manager,

Shriram General Insurance Company Limited,
Situated at No.66,
Thirumal Pillai Road,
2nd Floor, City Centre,
T.Nagar, Chennai.

... Respondents/ Respondents

(R1 remained exparte before the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2018 and made in M.A.C.T.O.P.No.1547 of 2017 on the file of the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai.

For Appellant : Ms.A.Subadra

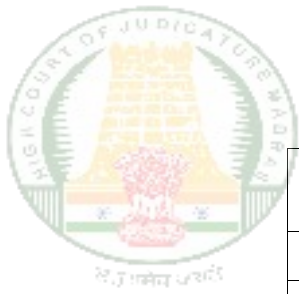
For Second Respondent: Ms.K.Poomalai

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal. He is aggrieved by the impugned order dated 26.04.2018 passed by the Motor Accident Claims Tribunal (Special Sub Court, Tiruvannamalai), Tiruvannamalai, in M.C.O.P.No.1547 of 2017.

2. By the impugned Judgment and Decree dated 26.04.2018, the Tribunal has awarded a sum of Rs.2,05,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit to the appellant/claimant for the injuries suffered by him as detailed below:-

Sl. No.	Head	Amount
1	Disability - 40% (40 x 3,000)	Rs.1,20,000/-



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Sl. No.	Head	Amount
2	Pain and Sufferings	Rs. 45,000/-
3	Loss of earning during the treatment period	Rs. 35,000/-
4	Extra Nourishment	Rs. 5,000/-
Total		Rs.2,05,000/-

3. The appellant/claimant has filed this Civil Miscellaneous Appeal for enhancement of compensation on the ground that the Tribunal has awarded a meagre sum of Rs.1,20,000/- towards Disability even though Ex.C1, Medical Report clearly indicates that there is fracture at Left Greater Trochanter of Femur Malunited of the appellant. A Trochanter is a tubercle of the femur near its joint with the hip bone.

4. Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent Insurance Company.

5. The appellant/claimant is the Mason who aged about 25 years when he met with an accident on 01.12.2013 at 11.30 a.m. The appellant/claimant was travelling as a pillion rider on a CBZ two wheeler bearing registration number TN-25-AD-9718 of the first respondent insured with the second respondent Insurance Company. It is his case before the Tribunal that the first respondent drove the insured vehicle in a rash and negligent manner and hit against one Bajaj CT 100 two wheeler bearing registration number TN-22-AK-8556 which was coming from the opposite direction near junction road at Sanananthal Village in Tiruvannamalai to Mangalam road. The appellant/claimant and the first respondent sustained injuries as a result of the accident. According to the appellant/claimant, in the accident, he had sustained the following injuries:-

- i. Fracture in left femur bone, left thigh and left leg
- ii. Serious injuries in left hand, left lower limb, face hand and some other parts of his body.

6. As per Ex.C1, Medical Report, the appellant/claimant had suffered fracture at Left Greater Trochanter of Femur Malunited. A Trochanter is a tubercle of the femur near its joint with the hip bone. The injury would have been certainly compromised the physical capacity of the appellant/claimant. Therefore, the appellant/claimant being a manual labour, i.e, mason, is entitled to a just compensation as per the decision of the Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343.

7. The injuries sustained by the appellant/claimant is a permanent disability. The Medical Board also concluded that



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the appellant had sustained 40% permanent disability. The Tribunal has however come to a conclusion that there is no functional disability. This is contrary to the medical records, particularly, Ex.C1 Medical Report. This Court is therefore inclined to consider the functional disability of the appellant as 15% for awarding a just compensation to the appellant/claimant.

8. Under these circumstances, this Court is inclined to re-compute the compensation awarded by the Tribunal as follows :-

Heads and Calculation	Compensation enhanced by this Court
# Monthly Income - Rs.5,500/-	
# Annual Income before the accident (5,500 x 12)	
: Rs.66,000/-	
** Add : Future Prospectus at 40%	
(66,000 x 40/100)	
: Rs.26,400/-	

: Rs.92,400/-	

# Functional Disability at 15%	
(92,400 x 15/100)	
: Rs.13,860/-	
* Multiplier applicable with reference to the age : 18	Rs.2,50,000/-
(13,860 x 18)	
: Rs.2,49,480/-	
(Rounded off to Rs.2,50,000/-)	
Pain and Sufferings	Rs. 25,000/-
Loss of Amenities	Rs. 25,000/-
Extra Nourishment	Rs. 5,000/-
Transportation	Rs. 5,000/-
Total	Rs.3,10,000/-



As per the decision in Raj Kumar's case (supra).

* As per the decision in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

** As per the decision of the in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

9. Thus, the second respondent is directed to deposit the above compensation of Rs.3,10,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit, less any amount already deposited, in the method of payment directed by the Tribunal in the impugned Judgment and Decree, within a period of six weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-

Assistant Registrar(AD IV)

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Sub Assistant Registrar

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To
The Special Judge,
Motor Accident Claims Tribunal,
(Special Sub Court),
Tiruvannamalai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras

+1 cc to Ms.A.Subadra, Advocate Sr.NO.23169

+1 cc to Ms.K.Poomalai, Advocate Sr.NO. 23082

C.M.A.No.3492 of 2019

MG(CO)
A.SK(10.11.2021)