



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1336 of 2018

R.Vasanth @ Bala V.Rajan

... Appellant/Petitioner

Vs

1.L.Moti

(R1 remain exparte before the Tribunal hence his presence may be dispensed with)

2.United India Insurance Company Limited,  
No.19, Andiappa Gramani Street,  
Royapuram,  
Chennai-13.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.09.2017 made in M.A.C.T.O.P.No.2503 of 2008 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For Respondents : Mrs.R.Rathna Thara for R2  
R1-Exparte

#### J U D G M E N T

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

2.The appeal is filed by the claimant for enhancement of compensation.

3.The claimant herein met with a road accident on 03.06.2008, while he was riding his two wheeler bearing Registration No.TN 22 M 0425. According to the claimant, when he was riding his two wheeler along GST road at Kirapakkam junction, Guduvanchery, an Auto bearing Registration No.TN 05 V 6424 driven rash and negligently by its driver hit behind the



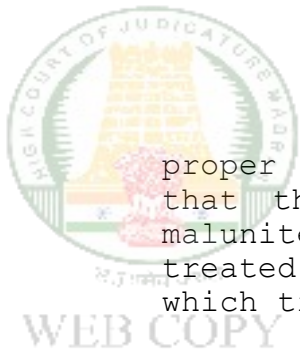
claimant's two wheeler. The claimant sustained grievous injury and was admitted in the hospital. He was treated as inpatient from 03.06.2008 to 27.06.2008 for the fractured injury. The fracture on his right humerus at supra condylar level with external fixation, external fixation debridement, open reduction internal fixation + olecranon osteotomy, had lead to 45% partial and permanent disability. In support of his claim, he has relied upon the evidence of P.W.2 and the disability certificate Ex.P10 given by P.W.2. The claim petition seeking compensation of Rs.6,00,000/- filed before the Tribunal.

4. The claim petition was opposed by the Insurance Company stating that the vehicle insured under them was not driven by qualified driver and the accident was not intimated to them. In any event, the claim made by the claimant is excessive, arbitrary and imaginary. The accident occurred only due to the negligence of the claimant. The claimant drove his scooter rash and negligently and hit TSTC bus bearing Registration No. TN 32 N 2483. Instead of claiming damages against TSTC bus, the claim being falsely made against the Insurance Company.

5. The Tribunal after considering the evidence held that the claimant has proved the accident occurred in the manner which he has stated in the petition. No evidence is adduced on behalf of the respondent to disprove the negligence on the part of the first respondent driver. Having held that the negligence is on the part of the first respondent driver, the Tribunal awarded a sum of Rs.1,57,862/- with 7.5% interest from 29.07.2008 till the date of realisation.

6. In the appeal, the claimant contends that the Tribunal failed to properly appreciate the medical evidence particularly, the disability certificate given by P.W.2, who has assessed the injury at 45%. After converting the said injury to loss of earning capacity, the Tribunal ought to have applied multiplier. Contrarily, the Tribunal has awarded a lumpsum of Rs.30,000/- fixing the injury at 10%. Further, the learned counsel for the claimant submitted that the injured was in hospital for nearly two months and lost his income during the treatment period and four months thereafter. The Tribunal ought to have awarded compensation for atleast six months loss of income.

7. Per contra, the learned counsel appearing for the Insurance Company submitted that the claimant suffered injury which are not mentioned in the schedule. The same was well treated and got united. There is no evidence to show that the fracture malunited after treatment. The Tribunal has given its logical reasoning based on the medical evidence and guidelines while assessing the disability. The evidence of P.W.2 and the disability Certificate Ex.P10 given by him are not based on any

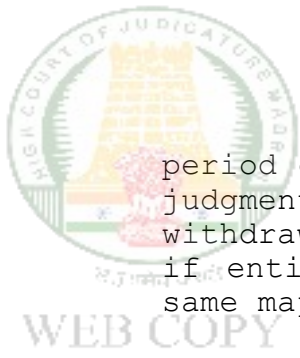


proper examination of the claimant. No X-ray was filed to show that the claimant sustained comminuted fracture and the same malunited after surgery. Further, P.W.2 is not the doctor who treated the claimant. No doctor from Hindu Mission hospital which treated him examined as witness.

8. On hearing both the learned counsels and considering the evidence, this Court finds that reasoning given by the Tribunal for disbelieving the evidence of P.W.2 and his Certificate Ex.P10 is wholly justifiable. The assessment of disability by P.W.2 is contrary to the medical evidence and guidelines. The injury as mentioned in the discharge certificate does not indicate that the said injury will lead to any functional disability impairing the earning capacity of the claimant. The discharge summary and the medical evidence indicate the loss of neurological muscle strength and fracture being treated by open reduction internal fixation. Therefore, permanent disability is assessed at 15% instead of 10% and loss of income is enhanced from two months to three months. Except this, there is no other head, where the claimant is entitled for enhancement of compensation. Accordingly, the award of the Tribunal is enhanced as below:

| Compensation under Various Heads      | Award passed by this Court |
|---------------------------------------|----------------------------|
| Pain and Suffering                    | Rs. 20,000/-               |
| Transport and Extra Nourishment       | Rs. 10,000/-               |
| Loss of income for 3 months (3X7500)  | Rs. 22,500/-               |
| Disability (15X3000)                  | Rs. 45,000/-               |
| Attender charges for 24 days (24X300) | Rs. 7,200/-                |
| Loss of amenities                     | Rs. 5,000/-                |
| Medical Expenditure (Ex.P3)           | Rs. 70,662/-               |
| Total                                 | Rs.1,80,362/-              |

9. Accordingly, the Civil Miscellaneous Appeal is partly allowed by enhancing compensation from Rs.1,57,862/- to Rs.1,80,362/- with costs and 7.5% interest from the date of numbering the petition i.e., 29.07.2008 till the date of deposit. If there is any delay in restoring the claim petition for default, the said period shall be excluded for computing interest. The Insurance Company shall deposit the money within a



period of eight weeks from the date of receipt of a copy of this judgment and on such deposit, the claimant is permitted to withdraw the same on appropriate application. The appellant, if entitled for refund of excess court fee paid in the appeal, same may be considered in accordance to law.

Sd/-

Deputy Registrar(Spl cell CJ conf)

//True Copy//

Sub Assistant Registrar

vri

To  
Motor Accidents Claims Tribunal  
VI Court of Small Causes,  
Chennai.

Copy to: The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to Ms.M.Malar, Advocate, S.R.No.7180

CMA NO.1336 of 2018

GJ(CO)  
CB(26/10/2021)