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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2021

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CMA No.327 of 2009

Govindarajan

... Appellant/Claimant

Vs.

1. Kanagasekar

2. Royal Sundaram Insurance Company Limited,
Cuddalore.

3. Oriental Insurance Company Limited,
Mayiladuthurai Town,
Nagapattinam District.

... Respondents/Respondents

Prayer: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 20.06.2007 passed in M.C.O.P.No.157 of 2005 by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Mayiladurai.

For Appellant

: Ms.H.Kavitha
for Mr.S.Sounthar

For Respondents

: Ms. Harini
for Mr.N.Vijayaraghavan for R2

Mr.D.Bhaskar for R3

No appearance for R1

O R D E R

Being not satisfied with the compensation awarded by the Tribunal, the claimant has filed the present Appeal to enhance the compensation.

2. The appellant/claimant has filed a claim petition seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that occurred on 11.12.2004.



3. Brief case of the claimant is as follows:

On 11.12.2004, at 8.45 p.m., while the claimant was returning from Anandamangam to Thiruvengadu in his Hero Honda Splendor motor cycle bearing registration No.TN-51-C-0939, a mini load auto bearing registration No.TN-51-C-0939, belonging to the first respondent coming from the opposite direction, hit the petitioner, thereby he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the mini auto was the cause of accident and since the first respondent insured his mini auto with the second respondent, both of them are liable to pay compensation to the claimant. The third respondent, who is the insurer of the motor cycle has been impleaded as a formal party to avoid raising of any legal issues.

4. The second respondent has filed the counter affidavit resisting the claim of the claimant.

5. Before the Tribunal, the claimant and one Dr.Rajasekaran were examined as PW1 and PW2 respectively and marked Exs.P1 to P21. were marked. On the side of the first respondent, no oral and documentary evidence were adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.60,000/- as compensation and directed the first and second respondents to pay the same to the claimant. Details of compensation awarded by the Tribunal is extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Disability	24,000
2	Medical expenses	11,500
3	Transportation charges	2,500
4	Loss of Income	20,000
5	Extra Nourishment	2,000
	Total	60,000

7. The learned counsel for the appellant/ claimant submitted that, the claimant sustained injuries on his right shoulder and right hand and a surgery was also done on his left leg and he was treated as an inpatient for nearly one month. However, the Tribunal has not awarded any amount towards "Pain and Suffering" and also towards "Loss of Amenities". He further submitted that the Tribunal has not applied multiplier method



while calculating compensation for "Permanent Disability" and no amount was awarded towards "Future Loss of earning capacity". Hence, he prayed for enhancement of compensation.

8. The learned counsel for the second respondent/ Insurance Company submitted that after perusing the oral and documentary evidence and also considering all the facts, the Tribunal has awarded a just and reasonable compensation and hence, and it does not warrant any interference by this Court.

9. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent, and perused the material documents available on record.

10. The Doctor, who issued Disability Certificate was examined as PW2. By considering the nature of injuries sustained by the claimant and also taking into account the surgery made on his right leg and also the shortened of right leg by 1.5 c.m., PW2-Doctor has assessed the disablement suffered by the claimant at 34%. However, without any reason, the Tribunal has reduced the same to 24% on its own. Therefore, the disability suffered by the claimant is fixed by this court at 34%, as per the Disability Certificate Ex.A2.

11. While awarding compensation, the Tribunal has rightly fixed a sum of Rs.1,000/- per percentage and hence, a sum of Rs.34,000/- is awarded towards "Permanent Disability". Further, considering the nature of the injuries sustained by the claimant and also taking into account the period of treatment as inpatient, a sum of Rs.15,000/- is awarded towards "Pain and Suffering" and a sum of Rs.5,000/- is awarded towards "Loss of amenities." Accordingly, the compensation awarded by the Tribunal is modified. Details of the same are tabulated below.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Disability	24,000	34,000
2	Medical expenses	11,500	11,500
3	Transportation charges	2,500	2,500
4	Loss of Income	20,000	20,000
5	Extra Nourishment	2,000	2,000



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Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
5	Pain and sufferings	-	15,000
6	Loss of amenities	-	5,000
	Total	60,000	90,000

12. The award passed by the Tribunal is enhanced from a sum of Rs.60,000/- to a sum of Rs.90000/- (Rupees ninety thousand only). The interest awarded by the Tribunal at 7.5% per annum from the date of claim petition till the date of deposit, is confirmed.

13. The second respondent/Royal Sundaram Insurance Company Limited is directed to deposit the revised compensation of Rs.90,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if any, already deposited, within a period of two months from the date of receipt of a copy of this order. On such deposit being made by the second respondent/Insurance company, the Appellant/ claimant is entitled to withdraw the same, after following due process of law.

14. In the result, the CMA is partly allowed. No costs.

Sd/-

Assistant Registrar (AS)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Mayiladurai.



Copy To

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

+1cc to Mr.Sounthar, Advocate SR.No.41850

CMA No.327 of 2009

MG (CO)
GN (07/12/2021)