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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1943 of 2020

(Through Video Conferencing)

A.G.Naveen Kumar

... Appellant/ Claimant

Vs.

1.M/s.Anush Associates Pvt. Ltd.,
A2, Karam Towers,
No.45, Old No.23,
Venkatanarayana Road,
T.Nagar, Chennai - 17.

2.ICICI Lombard General Insurance Co. Ltd.,
No.140, 2nd Floor, Chottabhai Centre,
Nungambakkam High Road,
Chennai - 34.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 19.06.2019 made in M.C.O.P.No.4239 of 2014 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For First Respondent : No appearance

For Second Respondent: Mr.Sivakolappan

JUDGMENT

The claimant is the appellant in this Civil Miscellaneous Appeal. He has filed this appeal for enhancement of compensation awarded by the Motor Accidents Claims Tribunal (III Court of Small Causes, Chennai), Chennai, in M.C.O.P.No.4239 of 2014.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,49,400/- as compensation together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of deposit, to the appellant for the injuries suffered by him.



on 10.03.2014 at about 08.30 a.m., when the appellant was riding motorcycle bearing registration No. TN-12-B-5449 on Madras - Bangalore High Road, a car bearing registration No. TN-09-BD-1111 driven by its driver allegedly in a rash and negligent manner insured with the second respondent Insurance Company came from the opposite direction first hit an Auto rickshaw and then dashed against the appellant and then a car, as a result of which, the appellant sustained grievous injuries.

4. The learned counsel for the appellant submits that while awarding the aforesaid compensation, the Tribunal has considered only 15% disability against the 20% disability assessed by the PW2 Doctor. It is further submitted that the Tribunal ought to have awarded a compensation towards disability at Rs.4,000/- per percentage for 20% disability that was assessed by the PW2 Doctor.

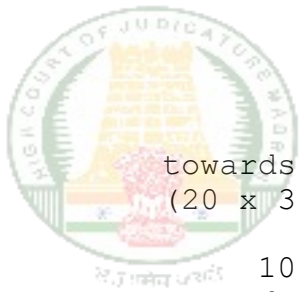
5. It is further submitted that the appellant was admitted over a period of 50 days in hospital as inpatient and therefore, the Tribunal committed error in confining the compensation towards loss of income only for a period of two months at Rs.12,000/- per month ($\text{Rs.12,000} \times 2 = \text{Rs.24,000}$). It is submitted that the nature of injury would put the appellant out of action at least for a period of six months. Therefore, the appellant is entitled to additional compensation towards loss of income.

6. Defending the impugned Judgment and Decree passed by the Tribunal, the learned counsel for the second respondent Insurance Company submitted that the impugned Judgment and Decree is well reasoned and requires no interference. He further submits that there is contradiction in the number of days admitted in the hospital and as per deposition of PW3, the appellant was hospitalised only for a period from 10.03.2014 to 14.03.2014. He further submits that the award amount may be confirmed and the appeal may be dismissed.

7. I have heard the learned counsel for the appellant and the learned counsel for the second respondent. I have perused the evidences on record and the impugned Judgment and Decree passed by the Tribunal.

8. There is no dispute regarding the nature of injuries suffered by the appellant, i.e. Fracture of Tibia Left and Crush injury left foot 10*5 cms., for which, he underwent IM nailing on the left Tibia and Skin grafting for left foot and K-wire fixation.

9. In my view, the Tribunal ought to have awarded a just compensation towards injuries instead of disability. This Court is therefore considered 20% disability assessed by the PW2 Doctor for enhancing the compensation towards injuries instead of disability. Thus, a sum of Rs.45,000/- awarded



towards disability by the Tribunal is enhanced to Rs.60,000/- (20 x 3,000) under the head of injuries.

10. The Tribunal has awarded only a sum of Rs.24,000/- towards loss of income. In my view, the appellant would have been out of action minimum for a period of six months. Therefore, a sum of Rs.24,000/- awarded by the Tribunal is enhanced to Rs.72,000/- (Rs.12,000 x 6). The amount of compensation awarded under the other conventional heads is not disturbed in this Judgment.

11. In the result, the loss of income of Rs.2,49,343/- rounded off to Rs.2,50,000/- awarded by the Tribunal is enhanced as follows:-

Heads	Award amount	Enhanced Amount	Status
Injuries	Rs.45,000/-	Rs.60,000/-	Enhanced
Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
Extra Nourishment	Rs.15,000/-	Rs.15,000/-	Confirmed
Transport to Hospital	Rs.15,000/-	Rs.15,000/-	Confirmed
Damages to clothes	Rs. 500/-	Rs. 500/-	Confirmed
Attender Charges	Rs. 7,000/-	Rs. 7,000/-	Confirmed
Medical Expenses	Rs.57,843/-	Rs.57,843/-	Confirmed
Future Medical Expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
Loss of Income	Rs.24,000/-	Rs.72,000/-	Enhanced
Loss of Amenities	Rs.10,000/-	Rs.10,000/-	Confirmed
Total	Rs.2,49,343/- rounded off to Rs.2,49,400/-	Rs.3,12,343/-	Enhanced by another sum of Rs.62,943/-

12. In the result, the amount of compensation awarded by the Tribunal is enhanced by another sum of Rs.62,943/-. Thus, the second respondent Insurance Company is directed to deposit a sum of Rs.3,12,343/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

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



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

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Sd/-

Assistant Registrar

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal,
(III Small Causes Court), Chennai.

2.The Section Officer,
V.R. Section,
Madras High Court.

C.M.A.No.1943 of 2020

BS (CO)
SB(23/11/2021)