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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.02.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1045 of 2017

M.Rajendran,
No.72-A, Velan Nagar, Manapakkam,
Porur, Chennai - 116.

... Appellant/Claimant

/versus/

1. G.K.Anantharaman,
No.30, Konory Street,
Walajapet - 632 513.
[R1- Already set exparte in Lower Court]
[R1- Notice may be dispense with]

2. The New India Associates Company Limited,
Motor Third Party Claims Office,
No.45, Moore Street, Chennai - 1.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the order and decreetal order dated 22.09.2014 made in M.C.O.P.No.364 of 2003 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thiruvallur, Poonnamallee.

For Appellant : Ms.Y.Jayanthi Bhaskar,
for Ms.J.Mahalingam.

For R2 : Mr.J.Chandran
For R1 : Mr.M.Siva Kumar

JUDGMENT

The Appeal is filed by the claimant seeking enhancement of compensation.

2. The short facts of the case is that, on 27.07.2002 at about 19.20 p.m when the petitioner while travelling in his motorcycle bearing registration No.TN-07-L-2067 on the left side of Ranipet bye-pass proceeding towards Madras, the ambassador car bearing registration No.TCL-1679 coming from opposite



direction dashed against the motorcycle and caused grievous injury, in which, the claimant sustained injuries on Compound Communitted fracture of both bones (Tibia and Fibula), deep cut injuries over right leg and also lacerated injury over the left leg and other parts of the body. He was given first aid at Government Vellore Medical College Hospital and later, shifted to Padmini Nursing Home, Chennai. He was treated as inpatient from 28.07.2002 to 05.08.2002 and continued treatment as out patient. The implantation was removed on 27.10.2002. He has incurred a sum of Rs.1,50,000/- expense towards the medical charges and sustain permanent disability of 40%. Hence, asserting his monthly income of Rs.8,000/- from out of his electrical shop business. Claim of Rs.6,00,000/- made against the owner of the car and his insurer.

3. The Insurance Company filed counter stating that they are not liable to compensate the claimant since the driver of the car had no valid driving license and permit. Further, the claim of compensation under various heads are exorbitant.

4. Before the Tribunal, the claimant examined 3 witnesses and marked 23 Exhibits. No witness and no documents were marked on behalf of the respondents.

5. After examining the witnesses and evidence, the Tribunal has awarded a sum of Rs.1,37,500/- with 7.5% interest reckoning from 04.09.2003 excluding the default period between 11.09.2006 to 11.12.2014.

6. The appeal filed by the claimant on the ground that, the Tribunal has not properly considered the claim of the appellant regarding disability and loss of earning power. The claimant was under treatment for more than 3 months and his loss of income during the treatment period. According to the Doctor, who examined the claimant has assessed 40% permanent disability. The movement of right knee and right ankle drastically reduced due to injury. The loss of amenities and attendant charges during the treatment period were not at all considered by the Tribunal.

7. Per contra, the Learned Counsel appearing for the respondents submitted that the Tribunal has fixed the partial permanent disability at 35%. The injury sustained by the claimant is compound comminuted fracture of both bones (Tibia and Fibula) and same is united, after surgery. From discharge summary Ex.P.3, it could be seen that the fixation was also removed on 27.10.2002. Therefore, in the absence of any evidence for loss of amenities and expense towards attendant charges, the award of the Tribunal based on available material is fair and just.



8. Heard the Learned Counsel for the appellant and the Learned Counsel for the respondents.

9. The accident occurred due to negligence of the car driver and same has been accepted by the Tribunal. As insurer of the car, who is the 2nd respondent/Insurance Company is liable to indemnify the owner of the offending car. From Ex.P.2 & Ex.P.3, the two discharge summaries issued by Padmini Nursing Home, Chennai, reveals that, for the Compound comminuted fracture of both right fibia and Tibula, external fixation was put on 28.07.2002 and on clinical examination being satisfied that the wound has healed well, the external fixation was removed on 27.10.2002. The fracture at right Tibia and Fibula not united and therefore, the doctor, who has clinically examined the claimant has assessed the disability at 40%. The photocopy Ex.P.8 shows the scars at the injured site.

10. On considering this evidence, the Tribunal has rightly fixed the disability at 35% and had awarded Rs.70,000/-. The said fixation is fair and adequate for the nature of injury sustained. However, for the loss of income during the treatment period, the Tribunal has awarded compensation only for two months which has to be enhanced to four months, since the fixation itself was removed only after three months. As far as compensation for attendant charges and loss of amenities are concerned, the Tribunal has not awarded any compensation to the above head. This Court award a sum of Rs.3,000/- under each head totally Rs.6,000/-, since there is no documentary evidence for the same. Accordingly, the award is enhanced to Rs.1,42,650/-.

Sl.N os	Compensation under various heads	Award passed by this Court
1.	Partial Permanent disability	70,000/-
2.	Medical expenses	20,150/-
3.	Pain and sufferings	20,000/-
4.	Nutritious expenses	5,000/-
5.	Loss of income for the period of two months (Rs.4,500 x 4)	18,000/-
6.	Damages to cloths	500/-
7.	Transportation	3,000/-
8.	Loss of amenities and Attendant Charges (Rs.3,000 x 2)	6,000/-
	Total	Rs.1,42,650/-



11. The award of the Tribunal is enhanced to Rs.1,42,650/- with interest at the rate of 7.5% p.a from the date of petition till the date of realisation (excluding the default period). The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount with interest, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the award amount with accrued interest on filing proper application.

12. Accordingly, the Civil Miscellaneous Appeal is partly-allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1. The Motor Accident Claims Tribunal,
II Additional District Court,
Thiruvallur,
Poonnamallee.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.8071

C.M.A.No.1045 of 2017

GMR (CO)
GMY (07/09/2021)