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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.02.2021

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.45 OF 2017

R.Suresh,
S/o.Ramalingam,
No.501, Satya Nagar,
9th Street, Kovilambakkam,
Chennai - 600 117.

... Appellant/Petitioner

/versus/

1. S.Ramesh,
No.8, Anna Salai,
Sholinganallur,
Chennai - 600 119.
(R1 remained exparte before the Tribunal,
hence his presence may be dispensed with)

2. Reliance General Insurance Co.Ltd.,
RAI's Tower, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai - 600 040.

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 05.02.2016 and made in M.A.C.T.O.P.No.1234/2013 on the file of the II Judge of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For R2 : Mrs.Bhuvana Sundari

For R1 : exparte



J U D G M E N T

This Appeal filed by the claimant seeking enhanced compensation being not satisfied with the award amount passed by the Tribunal.

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2. According to the claimant on 11.01.2013 at about 13.30 hrs while he was riding his motorcycle bearing registration No.TN-22-CV-0203 at Shozhinganallur, K.K.Salai near Prathiyangara Temple from east to west direction, a lorry coming behind him rash and negligently hit the motorcycle, in which, the claimant sustained grievous injury. He was admitted in a private hospital for 25 days as inpatient and got discharged. After few months, when pain developed and felt difficulty in walking, again took treatment as out patient for six months so he was not able to attend the college for six months. Therefore, claim petition for sum of Rs.15,00,000/- was filed against the owner of the driver and his insurer.

3. The claim petition was contested by the Insurance Company on the ground that the lorry driver had no valid driving licence or batch. Further, the accident occurred due to negligence of the claimant and not due to negligence of the lorry driver.

4. Before the Tribunal, the claimant had examined Dr.Thanagaraj, who assessed disability as 55% and gave disability certificate Ex.P.8. In support of his claim, he examined himself as P.W.1 and 9 Exhibits were marked.

5. The Tribunal, after going through the records and evidence considering the nature of injury sustained by the claimant and other medical records, awarded a sum of Rs.2,70,000/- as compensation with 7.5% interest from the date of numbering the petition (01.03.2013) till the date of deposit.

6. In the appeal, it is contended that the Tribunal had failed to appreciate the fact that the claimant sustained head injury involving fracture sacral ala, fracture left superior inferior public rami, fracture right superior inferior public rami. Though, the doctor has assessed 55% disability, without assigning any reason, the Tribunal has reduced it to 50% disability. The Tribunal has not taken note of the fact that the claimant lost his six months education due to the injury. Further, Learned Counsel for the appellant submitted that the claimant was a B.Sc student studying in Mohamed Sadak College. Due to the permanent disability, he was not able to walk, sit and lay down on right side. The discharge summary marked as Ex.P.3, reveals that the claimant had lost his comfort and amenities due to the accident. Therefore, taking note of the



future medical expenses required and to regain the normal health compensation should be enhanced.

7. Per contra, the Learned Counsel for the Insurance Company would submit that the Doctor, who has given disability certificate, admits that, the injury sustained by the claimant is not a scheduled injury and the percentage assessed by him is only for the part of the body and not for the whole body.

8. The Tribunal has generously fixed 50% disability and has awarded Rs.1,50,000/- for the permanent disability. For other heads the compensation awarded is in turn with evidence. Hence, there is no necessity to interfere or modified the award amount. The discharge summaries marked as Ex.P.2 & Ex.P.3 indicates that the claimant has taken treatment in two spells and he was discharged after being fully recovered from the injuries. Ex.P.3 discharge summary issued by the doctor say, malunited sacral ala fracture/public rami fracture. No surgery was conducted and the claimant was treated conservatively for his injuries. Therefore, the award of compensation towards 50% disability is based on the evidence and record. As far as medical expenses is concern, though the claimant has produced bills only for Rs.2909/- the tribunal has awarded Rs.13,000/- towards medical expenses and also awarded Rs.7,000/- towards future medical expenses. The claimant was only a student so there is no loss of income during the treatment period. But then the Tribunal has awarded Rs.20,000/- under the head loss of earning during treatment. On taking into consideration all these facts, this Court finds that the claimant has been adequately compensated for the injury he sustained in the road accident. There is no scope to enhance the award any further. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Deputy Registrar(C.S)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1. The II Judge of Small Causes,
Chennai.



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

+1cc to Mr.M.Malar, Advocate, S.R.No.10025

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SR-I (CO)
CS/02/09/2021