

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.56 of 2017

M.Srinivasan

....Appellant/Petitioner

Vs

1.S.Venkatesan

2.Reliance General Insurance Co. Ltd.,

New No.23, Spurtank Road,

Chennai 600 031.

....Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2016 made in M.C.O.P.No.221 of 2013 on the file of the Motor Accidents Claims Tribunal, V Judge, Court of Small Causes, Chennai.

For Appellant : Ms.A.Salomi

for Mr.V.Venkatesan

For Respondents : Mrs.C.Bhuvanasundar for R2

R1-Exparte

J U D G M E N T

(This case has been heard through Video Conferencing)

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

2.The appeal is filed by the claimant for enhancement of compensation, being not satisfied with the quantum of compensation awarded by the Tribunal.

3. The facts of the case is that on 07.10.2012 at about 07.15 p.m., while the petitioner was crossing Thiruporur Road near Pillaiyarkovil, rider of a two wheeler without any registration number, being a new vehicle dashed against the appellant causing fracture injury. The appellant was taken to the hospital and treated for his fracture proximal tibia right side and lacerated injuries over the body. The claim petition was filed for a sum of Rs.6,00,000/- alleging that the claimant was working as an Office Assistant in Hindustan Institute of Engineering College for a monthly salary of Rs.6,500/- and due

to the fractured injury, he was unable to move and find difficult to stand and walk.

4.The claim petition was resisted by the Insurance Company through its counter stating that the injury and the disability averred in the claim petition are exaggerated and the quantum of compensation claimed is highly excessive and not in consonance with the injury sustained. Further, the plea of want of valid driving license to the rider of the offending vehicle was also raised in order to get exonerated from the liability.

5. The Tribunal, after considering the evidence has held that the accident has occurred due to the negligence of the motor cycle rider and the motor cycle is duly insured under the appellant herein. As far as the injury sustained by the claimant, though the doctor has opined that the disability is 55%, the Tribunal after considering the nature of injury i.e. Fracture proximal tibia for which right ORIF and bone grafting done, fixed the disability at 25%. The total sum of Rs.3,07,000/- was awarded under the following heads:

Compensation under Various Heads	Award passed by this Court
Transportation and Nourishing food	Rs. 10,000/-
Attender Charges	Rs. 4,000/-
Medical Expenses	Rs. 1,28,495/-
Disability	Rs. 75,000/-
Loss of earning during the period of treatment	Rs. 19,500/-
Damages for pain, suffering and trauma	Rs. 35,000/-
Loss of amenities	Rs. 35,000/-
Total	Rs. 3,06,995/-
Rounded off to	Rs. 3,07,000/-

6.The appeal is preferred on the ground that the Tribunal has lower estimated the disability, while the competent doctor has assessed 55% disability and the Tribunal has reduced the disability to 25% without any reason. Further, for transport and extra nourishment, the Tribunal has awarded only Rs.10,000/- as against the claim of Rs.20,000/-. It is also contended by the learned counsel for the appellant that the Tribunal ought to have awarded an additional compensation towards future medical treatment.

7. Learned counsel appearing for the Insurance Company would submit that the claim of the appellant was excessive and

exorbitant without any evidence. The assessment of 55% disability given by the Doctor, who is a regular Court visitor was not for the whole body but for the part of the body. Hence, the Tribunal has rightly assessed the disability for the whole body at 25%. In fact, the Tribunal ought to have awarded only Rs.2000/- per percentage of disability whereas awarded Rs.3000/- per percentage of disability.

8. On considering the rival submission, this Court finds that the accident occurred on 07.10.2012. The claimant/appellant was admitted in the hospital for his injury. He was treated as inpatient on three spells covering a total period of 21 days. He has produced the medical bill for Rs.1,28,495/- and the Tribunal has rightly reimbursed the said medical expenses. As against the pain and suffering and loss of amenity, the Tribunal has awarded Rs.35,000/- each. Towards, the loss of income during the treatment period, a sum of Rs.19,500/- has been awarded. This Court finds that compensation under these heads are fair and adequate. As far as the percentage of disability, as rightly pointed out by the learned counsel for the respondent it is only to the said part of the body and not for the whole body. The assessment of 25% disability for the fracture proximal tibia is appropriate and requires no interference.

9. Taking into consideration the nature of the injury and the three spells of treatment in the hospital as inpatient, this Court is of the opinion that the claimant/appellant deserves additional compensation of Rs.5000/- towards transport and nourishment and Rs.2,500/- towards attender charges except an addition of Rs.7,500/- in total under the above two heads, in all other aspects, the award of the Tribunal is confirmed.

10. Accordingly, the award of Rs.3,07,000/- is enhanced to Rs.3,14,500/- with 7.5% p.a. from the date of numbering the petition (i.e., 09.01.2013) till the date of deposit. The 2nd respondent Insurance Company is directed to deposit the award amount within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same on appropriate application.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

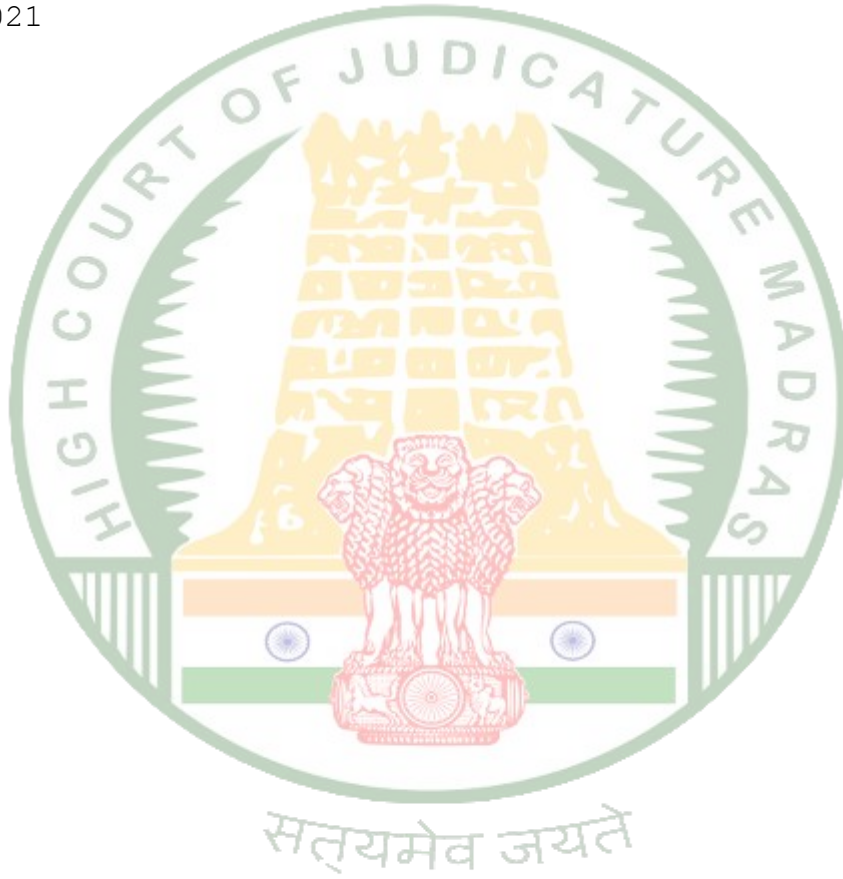
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To
The V Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

+1 CC to Mr.V.Venkatesan, Advocate Sr No.549

CMA No.56 of 2017

GP(CO)
RG.20.4.2021



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