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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.865 of 2017

P.Bharanidharan

.. Appellant/Petitioner

/versus/

1.B.Meera

2.The National Insurance Co.Ltd.,
Motor III Party Claim Office,
No.751, Anna Salai,
Chennai 600 002.

.. Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.03.2014 made in M.C.O.P.No.316 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge-II, Ponnammallee.

For Appellant :Ms.Y.Jayanthi Bhaskaran for
M/s J.Mahalingam

For Respondents :No appearance for R2
R1-Exparte

J U D G M E N T

This appeal has been filed by the claimant, being not satisfied with the quantum of compensation awarded by the Tribunal.

2.The claim petition was filed by the appellant herein seeking compensation of Rs.2,00,000/- against the owner of the water tank lorry bearing Reg.No.TN-01-C-9869 and its insurer alleging that on 08.03.2005 at about 03.30 p.m., while the claimant was riding his bi-cycle along the left side of Burkit Road from west to east, the tanker lorry driven rash and negligently by its driver dashed against him from the backside and caused grievous injuries. The claimant was admitted in the Government Hospital and took treatment for 25 days as in-patient. In the accident, he sustained injury on his right leg. Split skin grafting was done and extensive loss of skin and muscle over post traumatic raw rear right leg exposing bones.



Therefore, the respondents are liable to compensate the loss.

3.The Insurance company filed counter stating that the accident occurred due to negligence of the claimant, who while riding his cycle, suddenly came to the middle of the main road unmindful of traffic and hit the lorry. First Information Report was given belatedly against the lorry driver with fabricated facts in order to cheat the insurance company and get compensation.

4.Before the Tribunal, the claimant was examined as PW-1 and the Doctor, who gave the disability certificate was examined as PW-2. 4 exhibits namely, First Information Report, discharge summary and disability certificate and X-ray were marked in support of the claim. On the side of the respondents, no witness was examined and no document was relied on. The Trial Court, after considering the evidence placed before it, awarded a sum of Rs.65,000/- as compensation under:-

Sl. No.	Particulars	Award of the Tribunal (Rs.)
1.	Compensation for disablement	30,000-00
2.	Compensation for pain and suffering	10,000-00
3.	Loss of transport expenses	5,000-00
4.	Loss of extra nourishment	5,000-00
5.	Loss of income	15,000-00
	Total	65,000-00

5.In the appeal, it is contended that the Tribunal failed to consider the gravity of injury sustained by the claimant and the disability to make his earning. The Tribunal failed to follow the principle laid down by the Hon'ble Supreme Court in Rajkumar v. Ajaykumar reported in [(2011) 1 SCC 343]. It should have adopted the multiplier and awarded compensation for the loss of earning capacity. Also, the learned counsel appearing for the appellant submits that the award for loss of income, future earning capacity and other expenses like, attender charges, medical bills and loss of amenities were not taken by the Tribunal to fix a fair and reasonable compensation.

6.On perusal of the evidence let in by PW-1 and PW-2 and in the light of Exs.P1 to P4, it is clear that on 08.03.2005 at 03.30 p.m., the tanker lorry owned by the first respondent hit



the claimant/appellant causing injuries. In the said accident, the claimant, who sustained injury got admitted in the Government hospital, Chennai. He had been in the hospital for 25 days and the same has been deposed by the claimant as well as the Doctor, who clinically examined him and has issued the disability certificate assessing the injury sustained by the claimant has caused 20% disability. The Tribunal taking note of the fact that the assessment may suffer 5% error fixed 15% disability for computing the compensation.

7.The learned counsel appearing for the appellant submitted that the nature of injury on the leg of the claimant and the period of treatment as inpatient besides the disfigurement due to right peel skin grafting, were not taken into consideration by the Tribunal. The disability reduced to 15% by the Tribunal is not correct. The claimant at the time of accident was about 22 years working as Electrician-cum-Plumber. Due to the accident, he had been in the hospital as inpatient for 25 days and thereafter he should have been compensated for the lost his income for 3 months during the convulsion period.

8.While re-appreciating the quantum of compensation awarded by the tribunal, this Court finds, the award is fair and adequate, except omission to compensate the attender charges and medical expense. The claimant/appellant is entitled for another sum of Rs.6000/-(2000x3months) under the head of attender charges and a sum of Rs.6000/- towards medical expenses.

9.Accordingly, the award of the tribunal is enhanced as below:-

Sl. No.	Particulars	Award of the Tribunal (Rs.)	Award of this Court (Rs.)	Enhanced/ Confirmed/ Reduced/ Awarded
1.	Compensation for disablement	30,000-00	30,000-00	Confirmed
	Compensation for pain and suffering	10,000-00	10,000-00	Confirmed
	Loss of transport expenses	5,000-00	5,000-00	Confirmed
	Loss of extra nourishment	5,000-00	5,000-00	Confirmed
	Loss of income	15,000-00	15,000-00	Confirmed
	Attender charges	---	6,000-00	Awarded
	Medical expenses	----	6,000-00	Awarded



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Sl. No.	Particulars	Award of the Tribunal (Rs.)	Award of this Court (Rs.)	Enhanced/ Confirmed/ Reduced/ Awarded
	Total	65,000-00	77,000-00	Enhanced

10.The award of the Tribunal is enhanced from Rs.65,000/- to Rs.77,000/- with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation.(excluding the period of dismissal from 22.06.2010 to 28.10.2020 and 280 days delay in filing this appeal, which was condoned by this Court by an order dated 23.02.2017, subject to waiver of interest for the default period).

11.The 2nd respondent/insurance company is directed to deposit the enhanced award amount with interest, within a period of 8 weeks, from the date of receipt of a copy of this order. On such deposit, the claimant/appellant is permitted to withdraw the same by filing an appropriate application.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-

Assistant Registrar(Spl.CellCJ Conf)

//True copy//

Sub Assistant Registrar

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To:

1. The Motor Accident Claims Tribunal,
The Additional District and Sessions Judge,
Fast Track Court No.II, Poonamallee.

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

C.M.A.No.865 of 2017

SRI(CO)
GMY(03/09/2021)