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C.M.A.No.2203 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2203 of 2019

R.Manikkam

... Appellant/Claimant

Vs.

1.J.Thiyagarajan

2.United India Insurance Company Ltd.,

Motor Third Party Hub, Silingi Building,

4th Floor, No.134, Greams Road,

Chennai-600 006.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 166 and Rule 3 of the Motor Vehicles Act 1988, against the Award and Decree, dated 17.09.2018 made in M.C.O.P.No.2533 of 2016 on the file of the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.



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WEB COPY For Appellant : Mr. R.Nalliappan
For R1 : Dispensed with
For R2 : Notice served

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant against the award dated 17.09.2018, made in M.C.O.P.No.2533 of 2016, on the file of the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai for enhancement of compensation award.

2. The parties are referred to herein according to their status and ranking before the trial Court.

3. The case of the claimant is as follows:

On 28.03.2016 at 9.30 hours, while the petitioner was walking at GST Road, near HP.Petrol Bunk, the rider of two wheeler bearing Reg.No.TN-13-3720 came in a rash and negligent manner endangering public safety with high speed and dashed against the petitioner.



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As a result of which, the petitioner sustained grievous injuries all over the body. Hence, the petitioner has filed Claim Petition under Section 166 of Motor Vehicle Act, claiming compensation for a sum of Rs.9,00,000/- for the injuries sustained by him in a road accident.

4. Before the Tribunal, the first respondent who is the owner of the vehicle remained ex-parte and has not contested the claim.

5. The Second respondent-Insurance Company filed counter and contended that the accident occurred only due to the negligence of the petitioner. The claimant has to prove the age, occupation and monthly income of the petitioner. Further there is no permanent disability as the injuries are simple in nature. In any event, the quantum of compensation claimed by the claimant is highly excessive hence prayed to dismiss the claim petition.

6. Before the Tribunal, on the side of the petitioner, P.W.1 & P.W.2 were examined and Exs.P1 to P7 were marked. On the side of the respondent, no oral and documentary evidence were produced.



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7. Based on the evidence on record, the Tribunal has held that the rider of the two wheeler is responsible for the accident and it quantified the compensation and awarded Rs.1,07,000/- along with 7.5% interest per annum from the date of filling of the petition till the deposit of the amount. Aggrieved over the quantum of compensation the claimant has filed this appeal and seeking for enhancement. Respondents have not chosen to file any appeal against the award.

8. The learned counsel for the claimant submits that the Tribunal has failed to appreciate the evidence of the Doctor – P.W.2 who has assessed the disability of the claimant and has drastically reduced the percentage of disability which requires to be modified in this appeal. He also contended that the compensation awarded under various heads are also on the lower side and prays to enhance the same.

9. On the side of the Insurance Company, inspite of service of notice no one has come forward appear and name also printed in the cause list. I have considered the submission made by the learned counsel for the



appellant / claimant and also perused on the records.

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10. Before the Tribunal, PW2- Medical officer, who accessed the disability was examined. He stated that based on the records produced before him such as the Accident Register copy, treatment book, OP Chit and also X-ray of the injured limbs, independently accessed the percentage of disability. In Accident Register it is recorded that the claimant was found with following injuries, “ Deformity ® Leg and Foot, Deformity (L) Hib, # Radius”. The claimant has not produced any treatment record or any discharge summary to show that what kind of treatment he has undergone. P.W.2 – independently assessed the disability and fixed the same as 35 %. The Tribunal based on the injuries noted in Accident register and O.P.Chit, and also based on the evidence of P.W.2, fixed the disability as 10%. This has been agitated before this Court and the percentage fixed is not sufficient and the rejection of disability is to be modified. This Court is unable to appreciate the said contention, since there is no documentary proof to show that whether the injuries noted by the Doctors at the time of registering the accident register, were diagonalised into any grievous injuries, lead to



disability or not. It is not possible to assess the disability even by the P.W.2 without any treatment history or any connected Medical records. This Court is unable to approve the same. The Tribunal has fixed the disability at 10% based on the material evidence available in Ex.P1 and the same is acceptable. However the Tribunal has awarded Rs.3,000/- per percentage and the same is hereby modified to Rs.5,000/- per percentage. Accordingly the compensation fixed under the head disability is enhanced to Rs.5,000 x 10% =50,000/-.

11. The accident was taken place in the year 2016 and Deformity has been noted in both the legs accordingly, I am of the view that loss of amenities is to be modified from Rs.10,000/- to Rs.50,000/-. It is also an admitted case that the injured has taken treatment in the Government hospital which might required continuous assistant of the attender. Since the Tribunal has awarded two months income as the loss of income during the treatment period to the claim and he is also entitled for two months loss of income of the attender as attender charges accordingly, attender charges enhanced to Rs.20,000/-. Eventhough, claimant has not produced any medical bills, considering the deformity of the legs, I am of the view that



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medical expenses awarded shall be enhanced to Rs.15,000/-. With regard to other headings, the same is hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Towards Transportation and nourishing food	Rs.10,000/-	Rs.10,000/-	confirmed
2.	Attender Charges	Rs.2,000/-	Rs.20,000/-	Enhanced
3.	Medical Expenses	Rs.5,000/-	Rs.15,000	Enhanced
4	Disability	Rs.30,000/-	Rs.50,000/-	Enhanced
5	Loss of Earning	Rs.20,000/-	Rs.20,000/-	Confirmed
6	Damages for pain, suffering and trauma	Rs.30,000/-	Rs.30,000/-	confirmed
7	Loss of Amenities	Rs.10,000/-	Rs.50,000/-	Enhanced
	Total Compensation	Rs.1,07,000/-	Rs.1,95,000/-	Enhanced by Rs.88,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,07,000/- is hereby enhanced to Rs.1,95,000/- [Rupees One Lakhs Ninty Five Thousand only] together with interest at the rate of 7.5% per annum from the date of claim



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petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2533 of 2016, on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai. On such deposit, the appellant/claimant is entitled to withdraw the amount, now awarded by this Court along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

01.09.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accidents Claims Tribunal,
(IV Court of Small Causes), Chennai.



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



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K.RAJASEKAR,J.

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