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C.M.A.No.3309 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3309 of 2017

R.Anand

...Appellant

Vs.

1.Anitha Saini

**2.ICICI Lombard General Insurance Co.Ltd.,
No.H-140, 3rd Floor,
Nungambakam High Road,
Chennai – 600 034.**

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.4382 of 2011 dated 20.02.2017 on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai and praying to set aside the same.

For Appellant :M/s.Supathra

For R1 : Exparte

For R2 : Mr.K.Poomalai



J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.02.2017 made in M.C.O.P.No.4382 of 2011 on the file of learned II Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant is the claimant in M.C.O.P.No.4382 of 2011 on the file of learned II Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.3,50,000/-(Rupees Three Lakhs Fifty Thousand only) as compensation for the injuries sustained by him in the accident that took place on 25.04.2010.

3.The 1st respondent, owner of the lorry remained ex-parte before the Tribunal.

4.Before, the Tribunal, appellant was examined himself as P.W.1, Dr.J.R.R.Thyagarajan, was examined as P.W.2 and 17 documents were marked as Exs.P.1 to P.17. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.



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5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry owned by 1st respondent and directed the 2nd respondent - Insurance Company to pay a sum of Rs.2,32,000/- as compensation to the appellant.

6.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

7.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained Degloving Injury Left Foot with Dislocation II Toe MTP Joint with fracture base of 5th Metatarsal Left Foot and multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 35% disability and issued Ex.P16/disability certificate and Ex.P.17/X-ray to that effect. The Tribunal reduced the percentage of disability from 35% to 30% and awarded compensation only for 30% disability at the rate of Rs.3,000/- per percentage of disability.



The Tribunal ought to have awarded compensation for 35% disability. At the time of accident, the appellant was working as Regional Service Manager in Lava International Ltd., Royapettah, Chennai and was earning a sum of Rs.35,000/- per month. The appellant has taken treatment as inpatient at Vijaya Health Care, Chennai for seven (7) days from 25.04.2010 to 01.05.2010. The amounts awarded by the Tribunal towards disability, attendant charges, pain, sufferings and Trauma, are meagre and prayed for enhancement of compensation.

8.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 35% to 30% on the ground that disability assessment differs from one doctor to another to the extent of 5%. P.W.2/Doctor also has not filed the calculation for assessment of disability. Hence, the appellant is not entitled to compensation for 35% disability. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



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9.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

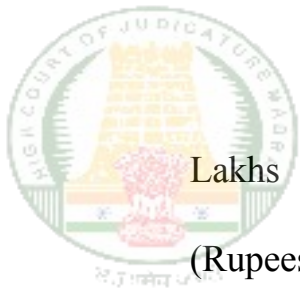
10.From the materials available on record, it is seen that it is the case of the appellant that in the accident, he sustained Degloving Injury Left Foot with Dislocation II Toe MTP Joint with fracture base of 5th Metatarsal Left Foot and multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 35% disability and issued Ex.P16/disability certificate and Ex.P17/X ray to that effect. The Tribunal reduced the percentage of disability from 35% to 30% on the ground that disabilities assessment differs from one doctor to another to the extent of 5%. The reason given by the Tribunal for reducing the percentage of disability from 35% to 30% is not correct. The 2nd respondent has not let in any evidence to disprove the evidence of P.W.2/Doctor, Ex.P16/disability certificate and Ex.P17/X-ray. Therefore, the appellant is entitled to compensation for 35% disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,05,000/- (Rs.3,000/- X 35% disability).



11. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,05,000/- (Rs.3,000/- X 35% disability). Considering the nature of injuries and disability, this Court is of the view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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 or confirmed
1.	Transportation, nourish food and Miscellaneous Expenditure	20,000/-	20,000/-	Confirmed
2.	Medical expenses	86,470/-	86,470/-	Confirmed
3.	Attender Charges	5,000/-	5,000/-	Confirmed
4.	Damages for pain, suffering and Trauma	20,000/-	20,000/-	Confirmed
5.	Disability	90,000/-	1,05,000/-	Enhanced
6.	Loss of Amenities	10,000/-	10,000/-	Confirmed
	Total	Rs.2,31,470/- rounded off to Rs.2,32,000/-	Rs.2,46,470/- rounded off to Rs.2,47,000/-	Enhanced by Rs.15,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,32,000/- (Rupees Two



Lakhs Thirty Two Thousand only) is hereby enhanced to Rs.2,47,000/- (Rupees Two Lakhs Forty Seven Thousand) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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 four (4) weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4382 of 2011 on the file of the learned II Judge, Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee on the enhanced award amount, if any. No costs.

04.01.2023

Index : Yes/No
Internet : Yes/No
Neutral citation
case : Yes/No
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A.A.NAKKIRAN,J.

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To

1.The II Judge,
Small Causes Court,
Motor Accident Claims Tribunal
Chennai.

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

C.M.A.No.3309 of 2017

04.01.2023