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C.M.A.No.511 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

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THE HON'BLE MR.JUSTICE P.B.BALAJI

Civil Miscellaneous Appeal No.511 of 2017

Sivamani

..Appellant

-VS-

1. Manasai @ Manasai Gnanaraj

2. The United India Insurance Co. Limited,
Divisional Office, No.73-C, MTH Road,
1st Floor, Ambathur, Chennai-53.

..Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 27.01.2014 passed in M.A.C.T.O.P.No.247 of 2011 on the file of Motor Accident Claims Tribunal and Subordinate Judge, Ponneri.

For Appellant

: Ms.Sunithi Abirami
for Ms.M.Malar

For Respondents

: R-1 served - no appearance

: Mr.D.Bhaskaran
for R-2

* * * * *



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JUDGMENT

The claimant is the appellant before this Court.

2. The claimant filed M.A.C.T.O.P.No.247 of 2011 before the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri, seeking compensation for the injuries suffered by him in the accident that occurred on 06.02.2011. According to the claimant, on the said day, he was riding his two wheeler and near Puthur Corporation School, 3rd Avenue, Ashok Nagar, Chennai, the auto bearing Registration No. TN-10-C-6990 being driven in a rash and negligent manner, dashed against the claimant resulting in injuries. Before the Tribunal, both the owner of the vehicle as well as the insurance company who were cited as respondents remained ex parte.

3. The Tribunal recorded the evidence of the claimant and Dr.J.R.R.Thiyagarajan as P.Ws.1 and 2 and taking into account Exs.P.1 to P.8 marked on the side of the claimant, the Tribunal awarded a sum of Rs.92,500/- as compensation.



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4. Aggrieved by the quantum, the claimant has preferred the present Civil Miscellaneous Appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the second respondent/insurance company.

6. The learned counsel for the claimant would submit that the Tribunal erred in taking 35% as disability though the Doctor had assessed the disability at 35% and an additional 10% disability because of the injury to the knee joint. The learned counsel contended that the amount awarded towards pain and suffering and loss of income during the period of treatment are also inadequate and low.

7. Per contra, learned counsel for the second respondent/insurance company contended that the Tribunal has already been liberal in fixing the compensation towards permanent disability and other heads and hence, the award need not be interfered with.



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8. This Court considered the submissions on either side and perused the oral and documentary evidence available on record.

9. Insofar as the disability of 35% fixed by the Tribunal is concerned, this Court is of the considered view that the same need not be interfered with, since it is just and reasonable. However, this Court is inclined to enhance the compensation awarded towards pain and suffering to Rs.20,000/- from Rs.15,000/- awarded by the Tribunal, considering the nature of injuries and the age of the claimant.

10. Insofar as the loss of income during the period of treatment is concerned, the Tribunal has awarded only a sum of Rs.1,500/- as monthly income. It is seen from the evidence of P.W.1, the claimant, that he was running a flour mill and earning a sum of Rs.15,000/- per month. However, the Tribunal has assumed a notional income of Rs.3,000/- and finding that at best the claimant would have not attended his work for fifteen days, proceeded to award a sum of Rs.1,500/- alone. It is to be noted that neither of the respondents chose to appear and contest the claim before the Tribunal and considering the averments in support of the claim petition and also the



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oral evidence of P.W.1, this Court feels that a sum of Rs.10,000/- can be awarded towards loss of income during the period of treatment, as against a sum of Rs.1,500/- awarded by the Tribunal.

11. Insofar as the other heads are concerned, the Tribunal awarded a sum of Rs.2,000/- towards transport to hospital, Rs.2,000/- towards medical expenses and Rs.2,000/- towards extra nourishment. This Court is of the view that said award amount under these heads, being just and proper, need not be interfered with. Accordingly, adding a sum of Rs.8,500/- towards loss of income during treatment and a sum of Rs.5,000/- towards pain and suffering, a total sum of Rs.1,06,000/- is awarded as compensation.

12. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the award of compensation from Rs.92,500/- as awarded by the Tribunal to a total sum of Rs.1,06,000/-. The respondent Insurance Company is directed to deposit the compensation amount of Rs.1,06,000/- (Rupees One lakh six thousand only) awarded by this Court, after deducting the amount already deposited if any, 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 and costs, to the credit of M.A.C.T.O.P.No.247 of 2011 on the file of Motor Accidents Claims Tribunal, Subordinate Court, Ponneri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the same. The appellant/claimant is directed to pay necessary Court fee on the enhanced award amount, if any, within a period of two weeks from the date of receipt of a copy of this order. No costs.

24.03.2023

Speaking/Non-speaking order

Index : Yes / No
Internet : Yes / No

sra

To

The Motor Accident Claims Tribunal,
Subordinate Judge, Ponneri.



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P.B.Balaji, J.

(sra)

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