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Jothi Vs. Jawahar and Another

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Court : Chennai Madurai

Decided On : Nov-22-2016

Judge : S.M. Subramaniam

Appeal No. : CMA (MD) No. 54 of 2007

Appellant : Jothi

Respondent : Jawahar and Another

Judgement :

(Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.10.2005 passed in MCOP.No.274 of 2004 on the file of the Motor Accident Claims Tribunal, (1st Additional Sub Judge), Tirunelveli.)

JUDGMENT

1. It is the case of an injury caused due to the accident took place on 20.09.1998 about 04.30 p.m on T.B.Road near M.G.R. Colony at Tiruchendur. The injured victim filed an application in MCOP.No.274 of 2004 before the Motor Accident Claims Tribunal, 1st Additional Sub Judge, Tirunelveli, and the Tribunal considering the facts and circumstances of the case, awarded Rs.16,000/- as total compensation with interest at 9% per annum. Not satisfied with the quantum of compensation, the claimant has filed this appeal, for enhancement, on the ground that the Tribunal ought to have calculated the loss of income by applying the

multiplier method. Further, the Tribunal had not considered the partial permanent disability and a meagre compensation was awarded under the head, pain and sufferings.

2. The learned counsel for the respondent insurance company opposed this appeal, by stating that it is a case of fracture in the left leg and the injured at the time of accident was 22 years and got cured completely and therefore, the compensation awarded by the Tribunal is just and no further consideration for enhancement of compensation is necessary.

3. Considering the rival contentions of the learned counsels both for the appellant and the 2nd respondent insurance company, this Court is of the view that the appellant/claimant was 22 years of age at the time of accident and it was a fracture over left leg. This apart, the fracture got cured and the appellant is performing his normal day-to-day affairs and therefore, it cannot be considered that he sustained permanent disability. But, the only point to be considered in this appeal is that the Tribunal has not awarded any reasonable amount for pain and suffering undergone by the appellant/claimant.

4. Though the appellant claimed Rs.10,000/- for pain and suffering, the Tribunal has awarded only Rs.2,500/- towards pain and suffering. Definitely, for a fracture, the appellant would have taken treatment for about 20 days and the Tribunal ought to have awarded Rs.10,000/-. Hence, this Court is inclined to award Rs.10,000/- for pain and suffering. Consequently, the total award is modified as hereunder:-

Grievous injuries	=	Rs.10,000/-
Simple injuries	=	Rs. 3,000/-
Pain and suffering	=	Rs.10,000/-
Transportation	=	Rs. 500/-

Total	=	Rs.23,500/-
(Less) Amount awarded		

by the Tribunal	=	Rs.16,000/-

Enhanced amount	=	Rs. 7,500/-
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5. Enhanced compensation shall carry interest at 7.5% per annum from the date of petition to till the date of realisation. The 2nd respondent insurance company is directed to deposit the modified compensation now determined by this Court with proportionate accrued interest and costs, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant, is permitted to withdraw the same, through RTGS, by filing necessary applications before the Tribunal.

In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

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