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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2213 of 2009

N.Muniappan

...Appellant (Petitioner)

Vs

1.A.Sridhar

2.National Insurance Company,
Narathahalli Branch,
Near Canara Bank,
Marathahalli,
Bangalore - 560 037.

[R1-Exparty in the Lower Court.
Hence the dispense with]

...Respondents (Respondents)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.07.2008 made in M.C.O.P.No.131/2005 on the file of Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For Respondent : R1 - Exparte

: Mr.J.Chandran - (for R2)

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri, in M.C.O.P.No.131 of 2005 dated 08.07.2008.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The Appellant sustained injuries as a result of an accident that took place on 27.08.2003 caused by a lorry bearing registration No.TN-30-D-6752 owned by the first respondent and insured with the second respondent.



(ii)The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.131 of 2005, seeking a compensation of Rs.10,00,000/-.

(iii)The Motor Accident Claims Tribunal by its Award dated 08.07.2008 in M.C.O.P.No.131 of 2005, directed the second respondent to pay the Appellant a sum of Rs.1,38,678/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of realization.

3.Aggrrieved by the Award dated 08.07.2008 in M.C.O.P.No.131 of 2005 passed by the Motor Accident Claims Tribunal, the instant appeal has been filed by the Appellant.

4.Heard, Mr.M.Selvam, learned Counsel for the Appellant and Mr.J.Chandran, learned Counsel for the second respondent.

5.According to the learned Counsel for the Appellant, considering the nature of injuries sustained by the Appellant, the Tribunal has not awarded adequate compensation to the Appellant. The learned Counsel for the Appellant submitted that the Tribunal erred in awarding a meagre sum of Rs.55,000/- towards disability compensation, even though the Appellant had suffered fractures in the hip borne as well as in the fourth and fifth right hand metacarpal bornes.

6.According to the learned counsel for the Appellant, the Appellant was a lorry operator, earning a monthly income of Rs.10,000/- at the time of the accident. Considering the same, the learned Counsel for the Appellant would contend that the disability compensation awarded to the Appellant is a meagre compensation. Further, the learned Counsel would also contend that, no compensation was awarded towards loss of future earning capacity and towards loss of amenities. The learned counsel for the Appellant would further contend that the compensation awarded under the heads pain and suffering, extra nourishment charges and attender charges is also meagre and no compensation was awarded to the Appellant towards loss of income for the period during which he was unable to do his regular work.

7.Per contra, the learned Counsel for the second respondent Insurance Company would submit that the accident happened in the year 2003. Considering the nature of injuries sustained by the Appellant, the Tribunal has awarded a just compensation to the Appellant.



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8.This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels observes the following:

(a)It is an undisputed fact that only due to the rash and negligent driving by the driver of the lorry insured with the second respondent, the accident had happened which resulted in injuries sustained by the Appellant.

(b)The Appellant has sustained fracture in hip as well as sustained fracture in the fourth and fifth right hand metacarpal bones. As a result of the accident, being a lorry operator, the Appellant would certainly suffered loss of income, since it would have taken a considerable amount of time to heal his injuries. As a result of injuries sustained by the Appellant, he would have required the service of attender for a considerable period.

(c) As seen from the impugned Award, the Tribunal has not awarded any compensation to the Appellant towards loss of amenities as well as towards loss of income for the period during which the Appellant would not have been able to do his regular work as a result of injuries sustained by him. In the considered view of this Court, a sum of Rs.20,000/- will have to be granted to the Appellant towards loss of amenities and a sum of Rs.15,000/- will have to be granted to the Appellant towards loss of income for a period of three months from the date of accident.

(d) This Court is also of the considered view that the compensation awarded towards pain and suffering, extra nourishment charges and attender charges is also not adequate and therefore, this Court enhances the compensation awarded to the Appellant towards pain and suffering from Rs.25,000/- to Rs.40,000/-, towards nourishment from Rs.10,000/- to Rs.15,000/- and towards attender charges from Rs.5,000/- to Rs.15,000/-.

11.In the light of the above observations, this Court is of the considered view that the compensation awarded under the impugned Award has to be enhanced in the following manner:

SI. No.	Head	Amount awarded by the Tribunal	Amount to be awarded by High Court
1.	Permanent disability	Rs.55,000/-	Rs.55,000/-
2.	Medical Bills	Rs.33,678/-	Rs.33,678/-



SI. No.	Head	Amount awarded by the Tribunal	Amount to be awarded by High Court
3.	Pain & Suffering	Rs.25,000/-	Rs.40,000/-
4.	Nourishment	Rs.10,000/-	Rs.15,000/-
5.	Attender charges	Rs.5,000/-	Rs.15,000/-
6.	Loss of Amenities	Nil	Rs.20,000/-
7.	Transport expenses	Rs.10,000/-	Rs.10,000/-
8.	Loss of Income for 3 months	Nil	Rs.15,000/-
	Total	Rs.1,38,678/-	Rs.2,03,678/-

12. In view of the above observations recorded by this Court, the award passed by the tribunal is modified by enhancing the award amount from Rs.1,38,678/- to Rs.2,03,678/- and the second respondent is directed to deposit the award amount of Rs.2,03,678/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, to the credit of M.C.O.P.No.131 of 2005 on the file of Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant is permitted to withdraw the amount lying to the credit of M.C.O.P.No.131 of 2005 along with accrued interest by filing an appropriate application.

13. Accordingly, the appeal is partly allowed without costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Motor Vehicles Accident Claims Tribunal,
cum Additional District Court,
Dharmapuri.



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

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+1cc to Mr.J.Chandran, Advocate Sr.65451
+1cc to Mr.M.Selvam, Advocate Sr.65625

C.M.A.No.2213 of 2009

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srg 23/10/2018