

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.22 of 2012

L.Ramesh

... Appellant/Petitioner

..Vs..

1.B.Babu

(Was set exparte in the Trial Court)

2.The New India Assurance Co. Ltd.,

No.6, CASA Major Road,

Egmore,

Chennai - 600 008.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.09.2011 made in MACT O.P.No.2551 of 2007 on the file of the IV Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.V.Chithambaram  
for M.Saravanan

For Respondent 2 : Mr.J.Chandran  
R1-ex parte

#### J U D G M E N T

The instant appeal has been filed by the claimant challenging the Award dated 07.09.2011 passed by the Motor Accident Claims Tribunal, Small Causes Court, Chennai in M.C.O.P.No.2551 of 2007.

Brief facts leading to the filing of the instant appeal:

2. The Appellant sustained injuries as a result of an accident caused by a Tata Indica Car bearing registration No.TN02-W-6115 on 23.07.2006 at about 15.50 hours and the said vehicle is owned by the first respondent and insured with the second respondent. The Appellant preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.2551 of 2007 seeking a

compensation of Rs.2,50,000/- for the injuries sustained by him as a result of the accident. The Motor Accident Claims Tribunal by its Award dated 07.09.2011 in MCOP.No.2551 of 2007 directed the second respondent to pay the Appellant a sum of Rs.1,96,200/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. Aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant has preferred this appeal seeking enhancement of compensation.

Submissions of learned counsels:

3. Heard, Mr.V.Chithambaram, learned counsel appearing for the Appellant and Mr.J.Chandran, learned counsel appearing for the second respondent. The first respondent has remained ex parte both before the Tribunal as well as this Court.

4. According to the learned counsel for the Appellant, the Appellant has sustained grievous injuries as a result of an accident caused by a car owned by the first respondent which is insured with the second respondent. According to the Appellant, he sustained head injury, sub arachnoid hemorrhage/bilateral frontal & Temporal Lobe Contusion, fracture surgical neck of humerus left side, Abrasion over right side of face, Abrasion over right parietal region, multiple injuries all over the body and underwent surgery for fixation of nail. Further, according to the Appellant, he was hospitalized for almost 10 days between 23.07.2006 and 03.08.2006. According to him, at the time of accident, he was a field officer in Kotak Mahindra Finance Company and earning a sum of Rs.5,000/- per month. But the Tribunal has assessed his monthly income as Rs.4,500/- per month. It is his case that the Tribunal has not awarded any amount towards loss of earning capacity, under the impugned Award. Further it is his case that he should be awarded more compensation towards extra nourishment charges as well as transportation costs. It is also his case that even though the Doctor has assessed the disability of the Appellant at 45%, the Tribunal has assessed the same only at 40%. Considering all these factors, the Appellant has sought for enhancement of compensation to the extent of Rs.53,800/- in this appeal.

5. Per contra, according to the second respondent, the compensation awarded by the Tribunal under the impugned award is a just compensation. According to him, the Appellant has sustained only fracture in his right knee and he has been adequately compensated for his hospitalization between 23.07.2006 and 03.08.2006, as Tribunal has awarded a sum of Rs.53,700/- towards medical expenses.

Discussion:

6. This Court has perused and examined the impugned award. Admittedly, the Appellant was hospitalized between 23.07.2006 and 03.08.2006 and to prove the same, the Appellant has also filed discharge summaries issued by Sri Balaji Hospital and Agash Nursing Home namely Ex.P5 and Ex.P6 before the Tribunal. The nature of injuries sustained by the Appellant has not been disputed by the second respondent. Having sustained head injury as aforesaid and considering the fact that the Appellant was hospitalized between 23.07.2006 and 03.08.2006 on account of the accident, the Tribunal ought to have awarded a higher amount towards medical expenses, even though the Appellant had submitted only bills amounting to Rs.53,700/-, as the Appellant would certainly have incurred additional medical expenses. This Court is of the considered view that the amount awarded by the Tribunal under the head medical expenses has to be enhanced from Rs.53,700/- to Rs.65,000/-, considering the long period of stay in the hospital as well as towards his post operative medical expenses. Admittedly, the Appellant has also underwent surgery to fix his nail.

7. Under the impugned award, the second respondent has awarded only a sum of Rs.2,000/- towards Transportation cost and Rs.3,000/- towards extra nourishment charges, which in the considered view of this Court is too low. Applying the decision made in the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680, this court is of the considered view that the transportation cost, extra nourishment charges will have to be enhanced from Rs.2,000/- to Rs.5,000/- and Rs.3,000/- to Rs.5,000/- respectively. Insofar as compensation under other heads namely loss of income, pain and suffering and permanent disability are concerned, it does not call for any interference.

8. In the result, for the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified as follows:

| Heads                 | Amount Awarded by the Tribunal<br>(Rs.) | Modified Award Amount<br>(Rs.) |
|-----------------------|-----------------------------------------|--------------------------------|
| Loss of Income        | 22,500/-                                | 22,500/-                       |
| Transport to Hospital | 2,000/-                                 | 5,000/-                        |
| Extra nourishment     | 3,000/-                                 | 5,000/-                        |

| Heads                   | Amount Awarded by the<br>Tribunal<br>(Rs.) | Modified Award<br>Amount<br>(Rs.) |
|-------------------------|--------------------------------------------|-----------------------------------|
| Medical expenses        | 53,700/-                                   | 65,000/-                          |
| Pain and<br>suffering   | 35,000\-                                   | 35,000/-                          |
| Permanent<br>disability | 80,000/-                                   | 80,000/-                          |
| Total                   | 1,96,200/-                                 | 2,12,500/-                        |

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal is enhanced from Rs.1,96,200/- to Rs.2,12,500/- and the second respondent is directed to deposit the modified award amount 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 already deposited, to the credit of M.C.O.P.No.2551 of 2007 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai 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.2551 of 2007 together with accrued interest by filing an appropriate application. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

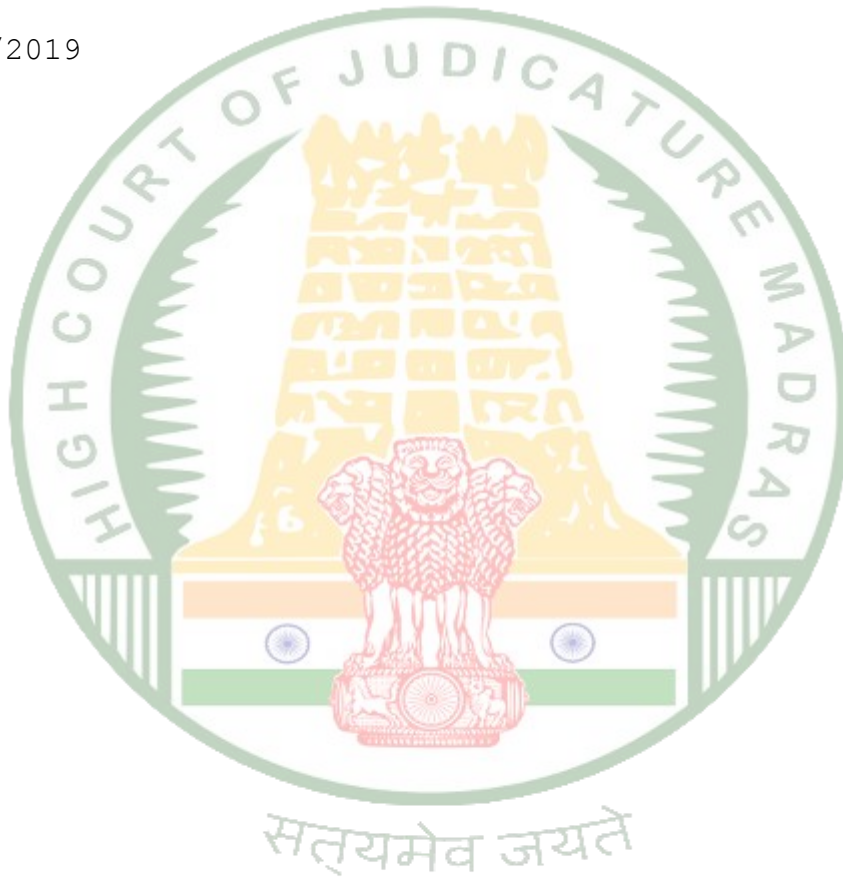
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2. The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate Sr.34925  
+1cc to Mr.M.Saravanan, Advocate Sr.34455

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