

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1074 of 2013

L.Rajesh

...Appellant/Petitioner

versus

1.P.Selvakumar
2. Cholamandal
General Insurance Company Ltd.,
Represented by its Authorised Signatory,
Second Floor,
No.1, Village Road,
Nungambakkam,
Chennai - 600 034. ... Respondents/Respondents
(1st respondent was exparte before
the Court below. Hence notice
may be dispense with)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the decree and judgment dated
31.12.2012 made in MCOP No.411 of 2010 on the file of the Motor
Accident Claims Tribunal (Chief Judicial Magistrate), Vellore.

For Appellant : Mr. C.Prabakaran
For Respondents : R1 - Exparte
Mrs.R.Sreevidhya for R2

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed seeking enhancement of
compensation under the impugned award dated 31.12.2012 passed by
the Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Vellore in MCOP No.411 of 2010.

2. According to the appellant / claimant, the compensation awarded by the Tribunal is low. According to him, even though the Doctor assessed the disability at 40%, the Tribunal without any basis has reduced the same to 20% and has awarded only Rs.40,000/- as compensation towards disability compensation.

3. Heard Mr. C.Prabakaran, learned counsel for the appellant and Mrs.R.Sreevidhya, learned counsel for the second respondent. R1 remained ex-parte before the Tribunal, hence notice to R1 is dispensed with.

4. This Court has perused the materials and evidence available on record before the Tribunal.

5. The appellant has sustained fracture in the left leg, as a result of an accident caused by the insured vehicle. The nature of injuries sustained by the appellant as well as the cause of the accident has not been disputed by the second respondent. The findings of the Tribunal under the impugned award has also not been challenged by them. Since, the findings having attained finality, the only question, which this Court is to consider whether the quantum of compensation awarded by the Tribunal is a just one or not.

6. The accident happened on 10.10.2009. At the time of the accident, the injured / claimant was a Cleaner in a lorry and in his claim petition, he had claimed that he was earning Rs.7,000/- p.m. However, since the appellant did not produce any documentary evidence, the Tribunal assessed his monthly income at Rs.4,000/-. The Tribunal under the impugned award has directed the second respondent to pay a sum of Rs.80,000/- to the appellant / claimant as compensation.

7. The details of the award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	4,000/-
Transport expenses	2,000/-
For Nutrition	5,000/-
Medical expenses	9,000/-
Pain and sufferings	20,000/-
Disability @ 20% at Rs.2,000/- per percentage	40,000/-
Total	80,000/-

8. Ex.P9 is the disability certificate marked before the Tribunal. As per the disability certificate which has been issued by the Doctor, who examined the appellant, he has suffered 40% disability. However, the Tribunal has assessed the disability at 20%. The Tribunal has also awarded only a sum of Rs.2,000/- per percentage of disability as compensation to the appellant under the impugned award. Considering the year of the accident i.e., 2009 and considering the fact that the appellant was a Cleaner of a Lorry, the Tribunal ought to have awarded a higher compensation for the appellant / claimant.

9. In the considered view of this Court, a sum of Rs.3,000/- per percentage of disability will be a just compensation towards disability compensation to the appellant instead of Rs.2,000/- per percentage of disability fixed by the Tribunal. Accordingly, this Court enhances the disability compensation alone. The modified award is as follows :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	4,000/-	4,000/-
Transport expenses	2,000/-	2,000/-
For Nutrition	5,000/-	5,000/-
Medical expenses	9,000/-	9,000/-
Pain and sufferings	20,000/-	20,000/-
Disability @ 20% * at Rs.2,000/- per percentage # at Rs.3,000/- per percentage	40,000/- *	60,000/- #
Total	80,000/-	1,00,000/-

Excepting for the compensation towards disability, the compensation awarded by the Tribunal under various other heads as seen from the evidence available on record is a just one, in the considered view of this Court.

10. For the foregoing reasons, the award passed by the Tribunal under the impugned award is modified to the extent indicated above. Accordingly, the Civil Miscellaneous Appeal shall stand partly allowed. No costs.

11. The second respondent /Insurance Company is directed to deposit the entire award amount as awarded by this Court. As regards the interest, the same shall be calculated at 7.5% p.a. from the date of filing of this appeal, i.e. on 18.03.2008 till the date of realization and costs, after deducting the amount, if any already deposited, to the credit of MCOP.No.411 of 2010, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimant through RTGS within a period of two weeks thereafter. Necessary Court fee, if any to be paid by the appellant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar (CS II)

/true copy/
Sub Asst. Registrar

vsi2

To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Vellore.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+1 cc to Mr.C.Prabakaran Advocate sr24847

C.M.A.No.1074 of 2013

pvs (co)
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