

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1131 of 2013

Dhilip Kumar

... Appellant/Claimant

Vs

1.R.Maharajan

2. Bajaj Allianz General Insurance Co. Ltd.,
Prince Tower, 4th Floor,
College Road,
Nungambakkam,
Chennai-600 034.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 22.06.2012 made in MCOP.400 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Poonamallee.

For appellant : Mr.G.Mannar Mannan

For respondents : Mr.E.Rajadurai
For Mr.N.Vijayaraghavan
R1 - Ex-parte

J U D G M E N T

This appeal has been filed by the claimant seeking enhancement of compensation awarded by the Tribunal under the common impugned award dated 22.06.2012 passed by the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Poonamallee in MCOP. No.400 of 2010.

2. The appellant/claimant sustained injuries on 17.08.2011 as a result of an accident caused by a vehicle bearing Registration No.TN 57 Z 4050 owned by the first respondent and insured with the second respondent.

3. The appellant/claimant preferred a claim petition before the Motor Accident Claims Tribunal in MCOP.No.400 of 2010 seeking compensation for the injuries sustained by him as a result of the said accident.

4. The Motor Accident Claims Tribunal, under the common impugned award dated 22.06.2012 passed in MCOP. No.400 of 2010 directed the respondents to pay a compensation of Rs.87,500/-

together with interest and costs to the appellant/claimant as detailed hereunder:-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earning	3,000/-
Transportation Charges	2,000/-
Extra nourishment	2,000/-
Damages to clothing and articles	500/-
Medical Expenses	30,000/-
Pain and suffering	10,000/-
Permanent disability	40,000/-
Total	87,500/-

5. Heard Mr.G.Mannar Mannan, learned counsel for the appellant/claimant, Mr.E.Rajadurai, learned counsel for the second respondent/Insurance company. The first respondent was set ex-parte before the Tribunal as well as this Court.

6. The appellant/claimant has sustained the following injuries:

- i. Fracture of left leg vertebral body;
- ii. Undisplaced fractures involving transverse process of L2 vertebral body;
- iii. Injury left 6th rib; and
- iv. Laceration left lung fields.

7. The nature of injuries sustained by the appellant/claimant has not been disputed by the respondents before the Tribunal.

8. Before the Tribunal, the appellant/claimant has filed 31 documents, which were marked as Exs.P1 to P31 and five witnesses were examined on his side which includes the appellant/claimant himself examined as PW3; and Malathi (PW1) and Amudha (PW2) are the eyewitnesses to the accident, who are the injured claimants involved in the same accident, and PW4 and PW5- the doctors, who examined him. On the side of the respondents, two witnesses were examined and four documents was marked as Ex.R1 to Ex.R4 before the Tribunal.

9. The appellant/claimant was hospitalised on 27.09.2008 and was discharged from the hospital only on 06.10.2008. The discharge summary issued by the hospital as well as the CT Scans and X-Rays taken by the appellant have been filed as documents before the Tribunal are marked as Exhibits. The medical bills, in relation to the appellant's treatment, were also marked as Exhibits before the Tribunal. The Doctor, who examined the appellant/claimant, has assessed his partial permanent disability at 25%. However, the Tribunal, on its own, without any basis, has reduced the percentage of the disability of the

appellant/claimant to 20%. After giving due consideration to the nature of injuries sustained by the appellant/claimant, this Court is of the considered view that the Tribunal has erroneously reduced the percentage of the disability of the appellant/claimant to 20%, even though the Doctor has assessed the same at 25%. Therefore, this Court retains the percentage of the disability assessed by the Doctor at 25%.

10. The appellant/claimant was aged 28 years at the time of the accident which happened on 17.08.2011 and his avocation was a tailor, working at Abimithra Apparels, Tiruppur. As seen from the evidence available on record, the age and avocation of the appellant/claimant has also not been disputed by the respondents before the Tribunal. The Tribunal, however, has assessed the monthly income of the appellant/claimant on notional basis at Rs.3,000/-, which in the considered view of this Court, is low. The Tribunal ought to have taken into consideration the year of the accident as well as the age and avocation of the appellant/claimant before assessing his notional monthly income, which the Tribunal has failed to do so. This Court, after giving due consideration to the same, fixes the notional monthly income of the appellant/claimant at Rs.6,000/- instead of Rs.3,000/-, erroneously assessed by the Tribunal, under the impugned award.

11. The Tribunal has awarded a compensation towards loss of earning only at Rs.3,000/- based on the erroneous finding of the Tribunal that the appellant/claimant would have been unable to do his regular work as a tailor only for a period of one month.

12. The appellant/claimant has sustained fractures as indicated earlier in this judgment and after giving due consideration of the same, he would have been unable to work as a tailor atleast for a minimum period of four months. Therefore, this Court fixes the compensation payable to the appellant/claimant towards loss of earning at Rs.24,000/- calculated for a period of four months at Rs.6,000/- per month. The compensation awarded by the Tribunal towards

- a. Transportation charges;
- b. Extra nourishment;
- c. Damages to clothing; and
- d. Pain and suffering

are also low and it has to be necessarily enhanced. Accordingly, this Court enhances the compensation payable towards transport charges to Rs.5,000/- towards extra nourishment to Rs.10,000/-; towards damages to clothing to Rs.1,000/- ; and towards pain and suffering to Rs.25,000/-.

13. The Tribunal ought to have properly considered the nature of injuries sustained by the appellant/claimant and ought to have awarded compensation towards loss of amenities and attender charges. But the Tribunal has failed to do so under the impugned award. Accordingly, this Court awards a sum of Rs.10,000/- towards loss of amenities and another sum of Rs.10,000/- towards attender charges to the appellant/claimant. As observed earlier, the disability of the appellant/claimant, assessed by the Doctors, who were examined as witnesses before

the Tribunal, has to be accepted. This Court fixes the disability at 25% instead of 20% which has been assessed by the Tribunal. Accordingly, the disability compensation is enhanced to Rs.50,000/- calculated at Rs.2,000/- per percentage of the disability for 25% and not at Rs.40,000/- for 20% disability, assessed by the Tribunal.

14. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.87,500/- to Rs.1,65,000/- to the the claimant/appellant in the following manner:-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earning	3,000/-	24,000/-
Transportation charges	2,000/-	5,000/-
Extra nourishment	2,000/-	10,000/-
Damages	500/-	1,000/-
Medical expenses	30,000/-	30,000/-
Pain and suffering	10,000/-	25,000/-
Permanent Disability	40,000/-	50,000/-
Loss of amenities	--	10,000/-
Attender charges	--	10,000/-
Total	87,500/-	1,65,000/-

Conclusion:

15. In the result, the Appeal is partly allowed. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent/ insurance company is directed to deposit the entire award amount of Rs.1,65,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.400 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 award amount to the Appellant/Claimant through RTGS within a period of four weeks, thereafter.

Sd/-

Assistant Registrar(CS-II)

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To

The Motor accident Claims Tribunal
(III Additional District and Sessions Judge),
Poonamallee.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.1131 of 2013

GP (CO)
GMY (26/04/2021)



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