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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3376 of 2010

K.Selvaraj

...Appellant

vs.

1. N.Subramani

2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
Branch Office 90-A, Thuraiyur Road,
Namakkal 637 002 D.O. at Chamundi Complex,
4 Roads, Salem - 7.

(1st respondent set exparte before Tribunal)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed by the Motor Accident Claims Tribunal, Principal Additional District Judge, Salem dated 21.10.2009 made in M.C.O.P.No.1943 of 2004.

For Appellant : Mr.K.Kuppusamy

For Respondents : R1 - Exparte

Mr.D.Bhaskaran for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 21.10.2009 passed by the Motor Accident Claims Tribunal (Principal Additional District Judge, Salem) in MCOP No.1943/04.

2.The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award seeks enhancement of compensation in this appeal.

3.The details of the Award passed by the Tribunal under the impugned Award are as follows:



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Disability	-	Rs.4,50,840/-
Conveyance expenses	-	Rs.1,000/-
Extra nourishment	-	Rs.5,000/-
Medical expenses	-	Rs.87,618/-
Expenses as per Ex.P14	-	Rs.400/-

Total		Rs.5,44,858/-

4.Heard Mr.K.Kuppusamy, learned counsel for the Appellant and Mr.D.Bhaskaran, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as before this Court.

5.The Appellant/claimant sustained grievous injuries and on account of the same, his right kidney was surgically removed (nephrostomy) and he also suffered fracture of his thumb finger.

6.Before the Tribunal, the Appellant/claimant has filed 17 documents which were marked as Exs.P1 to P17 and three witnesses were examined on his side, namely, the Appellant/claimant himself as PW1 and the Doctors who examined the claimant as PW2 and PW3 respectively. On the side of the second respondent Insurance Company, neither any document was filed nor any witness examined.

7.The nature of the injuries sustained by the Appellant/claimant has not been disputed by the second respondent/Insurance Company before the Tribunal as seen from the evidence available on record. The second respondent/Insurance Company have also not filed any appeal aggrieved by the finding of the Tribunal under the impugned Award and therefore, the adverse finding as against the driver of the insured vehicle given by the Tribunal has now attained finality.

8.The Appellant/claimant was aged 24 years and was a driver at the time of the accident which happened on 01.08.2004 caused by a vehicle insured with the second respondent Insurance Company. The Appellant/claimant in his claim petition had pleaded that he was earning Rs.10,000/- per month whereas the Tribunal under the impugned Award has fixed his monthly income at Rs.3,400/- per month.

9.No contra evidence has also been produced by the second respondent/Insurance Company to disprove the avocation of the Appellant/claimant.

10.The Tribunal has not awarded loss of future prospects to the Appellant/claimant which he is legally entitled as per the



decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC 680. As per the said decision, this Court fixes the same at 40%. Insofar as the percentage of disability as well as the application of multiplier by the Tribunal is concerned, the same is in accordance with the decision in Sarla Verma's case reported in (2009) 6 SCC 121.

11. In view of the addition of loss of future prospects, the disability compensation awarded by the Tribunal is enhanced from Rs.5,44,858/- to Rs.8,50,194/-. The Tribunal failed to Award any compensation to the Appellant/claimant towards pain and suffering, loss of amenities, loss of marital prospects, future medical expenses and attender charges despite fact that the Appellant/claimant had suffered grievous injuries and had to surgically remove his right kidney. Hence, this Court Awards a sum of Rs.50,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities, Rs.25,000/- towards loss of marital prospects, Rs.15,000 towards future medical expenses and Rs.10,000/- towards attender charges as additional compensation. Insofar as other heads of compensation awarded by the Tribunal namely, conveyance expenses, extra nourishment and medical expenses are concerned, the same is confirmed by this Court.

12. For the foregoing reasons, the impugned Award passed by the Tribunal is modified in the following manner:

Disability	-	Rs.6,31,176/-
Conveyance expenses	-	Rs.1,000/-
Extra nourishment	-	Rs.5,000/-
Medical expenses	-	Rs.87,618/-
Expenses as per Ex.P14	-	Rs.400/-
Pain & suffering	-	Rs.50,000/-
Loss of amenities	-	Rs.25,000/-
Loss of marital prospects	-	Rs.25,000/-
Future medical expenses	-	Rs.15,000/-
Attender charges	-	Rs.10,000/-

Total		Rs.8,50,194/-

13. In the result, the Appeal is partly allowed by enhancing the compensation from Rs.5,44,858/- to Rs.8,50,194/-. The respondents 1 and 2 jointly and severally are directed to deposit the modified award amount of Rs.8,50,194/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount already deposited if any, to the credit of MCOP No.1943/04 on the file of the Motor Accident Claims Tribunal, Principal Additional District Judge, Salem, 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 directly to the bank account of the appellant /claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellant before receiving the copy of this Judgment. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Principal Additional District Judge, Salem.
2. The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.3376 of 2010

CA(CO)
BE(10/08/2021)