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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1492 of 2013

M.Ilancheliyan

...Appellant/Claimant

vs.

1.S.Sekar

2.National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.11.2008 made in M.A.CT.OP.No.1899/2003, on the file of Additional District Judge, Motor Accident Claims Tribunal (In the Court of III Fast Track Court), Chennai.

For Appellant : Ms.M.Malar

For Respondents : R1 - Exparte

Ms.N.B.Surekha 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 10.11.2008 passed by the Motor Accident Claims Tribunal (III Fast Track Court) Chennai, in MCOP.No.1899 of 2003.

2.Heard Ms.Malar, learned counsel for the Appellant and Ms.N.B.Surekha, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The Appellant/claimant sustained injuries on 11.02.2003 as a result of an accident caused by a vehicle owned by the first



respondent and insured with the second respondent. He preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.1899 of 2003 seeking compensation for the injuries sustained by him as a result of the accident.

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4.The Tribunal under the impugned Award has directed the second respondent Insurance Company to pay the Appellant/claimant a compensation of Rs.88,000/- together with interest and cost.

5.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Medical expenses	-	Rs.25,600/-
Disablement	-	Rs.50,000/-
Pain and suffering	-	Rs.5,000/-
Extra nourishment	-	Rs.5,000/-
Transportation	-	Rs.2,400/-

Total		Rs.88,000/-

6.The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award has preferred this appeal seeking for enhancement.

7.The Appellant/claimant has sustained the following grievous injuries:

- (a) Fracture of right tibia
- (b) Facial fractions
- (c) Loss of teeth
- (d) Injuries all over his body

8.Before the Tribunal, the Appellant/claimant has filed 13 documents which were marked as Exs.A1 to A13 and three witnesses were examined on his side namely, the Appellant/claimant himself as PW1 and the Specialist Doctors who examined him as PW2 and PW3. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

9.The Ortho Doctor (PW2) has assessed the disability of the Appellant/claimant with regard to the bone fracture sustained by him at 40%. The Dentist (PW3) has assessed the disability of the Appellant/claimant with regard to his teeth at 25%. In all put together, the Appellant/claimant has suffered 65% disability. However, the Tribunal under the impugned Award on its own reduced the disability to 50% and has awarded disability compensation of Rs.50,000/- to the Appellant/claimant calculated at Rs.1,000/- per percentage of disability. As seen from the impugned Award no reason has given by the Tribunal for reduction of disability. There must be some basis for any reduction of



disability than what was given by the Doctors namely PW2 and PW3. Since no reasons are given and after giving due consideration to the nature of injuries, this Court is of the considered view that the assessment made by the respective Doctors namely PW2 and PW3 is a correct assessment. Accordingly, the total disability is fixed by this Court at 65% as assessed by the Doctors PW2 and PW3. The basis for assessing the disability compensation by the Tribunal at Rs.1,000/- per percentage of disability is correct in view of the fact that the accident happened in the year 2003. The only modification that is made by this Court is to assess the disability compensation for the Appellant/claimant at 65% at Rs.1,000/- per percentage of disability. Since this Court accepts the disability of the Appellant/claimant as assessed by the Doctors at 65%, the disability compensation is enhanced by this Court from Rs.50,000/- to Rs.65,000/- calculated at Rs.1,000/- per percentage of disability.

10.The Tribunal has awarded a compensation of Rs.25,600/- towards medical expenses, Rs.5,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and Rs.2,400/- towards transportation. Since the accident happened in the year 2003, the assessment made by the Tribunal under the aforementioned heads is a just compensation and does not call for any interference by this Court.

11.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.88,000/- to Rs.1,03,000/- by this Court in the following manner:

Medical expenses	-	Rs.25,600/-
Disablement	-	Rs.65,000/-
Pain and suffering	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Transportation	-	Rs. 2,400/-

Total		Rs.1,03,000/-

12.In the result, the appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified award amount of Rs.1,03,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation excluding the period of delay in filing of this appeal, after deducting the amount already deposited if any, to the credit of MCOP.No.1899 of 2003, on the file of the Motor Accident Claims Tribunal (III Fast Track 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 Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of MCOP.No.1899 of 2003 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.

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13. It is made that clear that there was a delay in filing of the appeal by the Appellant/claimant. For the delayed period, the appellant/claimant is not entitled for any interest.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
(III Fast Track Court), Chennai.

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

+1cc to M/s.M.Malar, Advocate Sr.29525
+1cc to M/s.N.B.Surekha, Advocate Sr.29438

C.M.A.No.1492 of 2013

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