

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.29.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.115 of 2012

Periyakaruppan

...Petitioner Appellant

vs.

1.R.Ashok Kumar
(R1 was set exparte in the trial court)

2.HDFC ERGO General Insurance Co. Ltd.,
Raheja Tower,
No.177, Anna Salai,
Chennai - 600 002. ...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 01.08.2011 made in MACT O.P.No.2176 of 2010 on the file of the V Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr.C.Munusamy

For Respondents : R1-Exparte
Mr.E.Rajadurai for
Mr.N.Vijayaraghavan for R2.

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 01.08.2011 passed by the Motor Accident Claims Tribunal (Vth Court of Small Causes, Chennai) in MCOP.No.2176 of 2010.

2. The Appellant/claimant sustained injuries on 04.06.2010 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 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal under the impugned award directed the second respondent to pay the Appellant/claimant a compensation of Rs.3,83,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of earning for the period of treatment	36,000/-
Transport to hospital	6,000/-
Extra nourishment	25,000/-
Damages to clothes	1,000/-
Medical Expenses	10,000/-
Attender Charges	25,000/-
Loss of amenities	20,000/-
Pain and suffering	30,000/-
Permanent disability	1,30,000/-
Loss if earning power	1,00,000/-
Total	3,83,000/-

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

5. Heard Mr.C.Munusamy, learned counsel for the Appellant and Mr.E.Rajadurai learned counsel representing Mr.N.Vijayaraghavan, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

6. Before the Tribunal, the Appellant/claimant has filed seven documents which were marked as Ex.P1 to Ex.P7 and three witnesses were examined on his side namely the Appellant/claimant himself as PW1, the Doctor who examined him as PW2 and the employer of the injured as PW3. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

7. In the claim petition, the Appellant/claimant has pleaded that he was a head cook, aged 46 years and earning Rs.10,000/-

per month at the time of the accident. Since no documentary evidence was produced by the Appellant/claimant with regard to his monthly income, the Tribunal has fixed the monthly income of the deceased on notional basis at Rs.6,000/-. The accident happened in the year 2010 and considering the same, the assessment of notional monthly income of the Appellant/claimant at Rs.6,000/- is a correct assessment.

8. The Appellant/claimant sustained the following injuries namely (a) fracture over skull, (b) serious head injury leading to concussion of brain, (c) bleeding injuries over nose and ears, (d) abrasions over right hand and (e) lacerated injuries over left hand as a result of the accident. The Doctor has assessed the disability of the Appellant/claimant at 65% as seen from the disability certificate which was marked as Ex.P5 and he has also been examined as a witness (PW2). The nature of injuries sustained by the Appellant/claimant has also not been disputed by the respondents as seen from the evidence available on record. After giving due consideration to the nature of injuries sustained by the Appellant/claimant, the assessment of disability at 65% by the Doctor and confirmed by the Tribunal is a correct assessment.

9. However, the disability compensation awarded by the Tribunal to the Appellant/claimant at Rs.1,30,000/- calculated at Rs.2,000/- per percentage of disability for the 65% of disability suffered by the Appellant/claimant is low and it has to be necessarily enhanced. After giving due consideration to the year of the accident, which happened in the year 2010, this Court enhances the disability compensation from Rs.1,30,000/- to Rs.1,95,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal.

10. The Tribunal has awarded Rs.36,000/- as compensation to the Appellant/claimant towards loss of earnings for the period of six month calculated at Rs.6,000/- per month which cannot be considered to be inadequate in view of the nature of injuries sustained by the Appellant/claimant as well as the period of his hospitalisation as seen from the discharge summary issued by the Hospital which was marked as Ex.P2. Accordingly, the same is confirmed by this Court.

11. With regard to the other heads of compensation awarded by the Tribunal namely Rs.6,000/- towards transportation, Rs.25,000/- towards extra nourishment, Rs.1,000/- towards damages to clothing and articles, Rs.10,000/- towards medical expenses, Rs.25,000/- towards attender charges, Rs.20,000/- towards loss of amenities, Rs.30,000/- towards pain and suffering and Rs.1,00,000/- towards loss of earning power cannot

be considered to be inadequate as alleged by the Appellant/claimant and therefore, the same is confirmed by this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.3,83,000/- to Rs.4,48,000/- by this Court in the following manner:

Heads	Amount awarded by the Tribunal (rs.)	Modified Award Amount (Rs.)
Loss of earning for the period of treatment	36,000/-	36,000/-
Transport to hospital	6,000/-	6,000/-
Extra nourishment	25,000/-	25,000/-
Damages to clothes	1,000/-	1,000/-
Medical Expenses	10,000/-	10,000/-
Attender Charges	25,000/-	25,000/-
Loss of amenities	20,000/-	20,000/-
Pain and suffering	30,000/-	30,000/-
Permanent disability	1,30,000/-	1,95,000/-
Loss of earning power	1,00,000/-	1,00,000/-
Total	3,83,000/-	4,48,000/-

Conclusion:

13. In the result, this Appeal is partly allowed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent Insurance company is directed to deposit the modified award amount of Rs.4,48,000/- along with interest from the date of claim till the date of deposit, and costs, after deducting the amount already deposited if any to the credit of MCOP.No.2176 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 along with accrued interest lying to the credit

of MCOP.No.2176 of 2010 to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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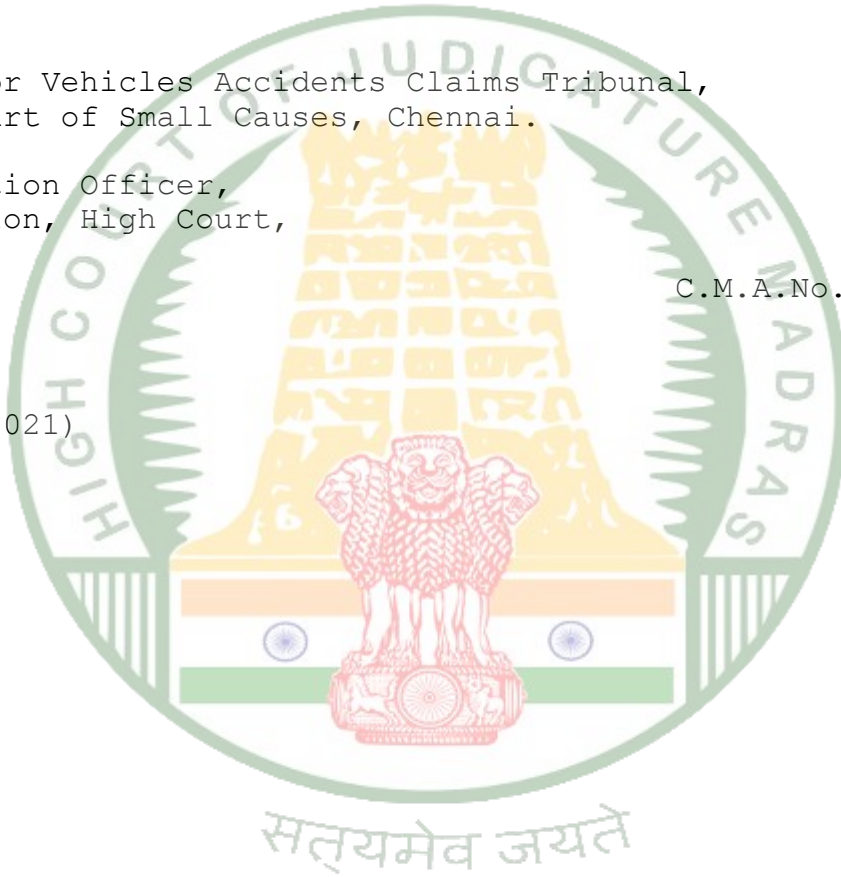
To

1.The Motor Vehicles Accidents Claims Tribunal,
Vth Court of Small Causes, Chennai.

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

C.M.A.No.115 of 2012

AD(CO)
CB(26/04/2021)



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