

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1581 of 2013

J.Balaji

... Appellant/Petitioner

..Vs..

1.N.Murugan

2.Iffco-Tokio General Insurance Co. Ltd.,

New No.28, Old No.195, 2nd Floor,

North Usman Road, T.Nagar,

Chennai - 600 017.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 28.11.2012 in MCOP.No.1933 of 2008 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.Ramya V.Rao

For Respondent 2 : Mr.Rajadurai

for Mr.N.Vijayaraghavan

R1 - vacated

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 28.11.2012 passed by the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes, Chennai) in MCOP.No.1933 of 2008.

2. The Appellant being unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this Appeal. The findings as regards the negligence of the driver of the insured vehicle has attained finality, since no appeal has been filed by the second respondent insurance company with regard to the said findings.

3. Hearing Mrs. Ramya learned counsel for the Appellant as well as Mr.Rajadurai representing Mr.N.Vijayaraghavan, learned counsel for the second respondent. The first respondent remained ex parte both before the Tribunal as well as this Court.

4. The Appellant who is the claimant sustained crush injuries in his right foot, fracture of second metatarsal bone and fracture of proximal phalange of second and third toe surgery and wound debridement was performed on him. Due to the injuries, he had to remain in Miot Hospital from 23.04.2006 to 03.05.2006 (10 days) as seen from Ex.P1 discharge summary. The Appellant/claimant was admitted once again in Miot Hospital on 11.05.2006 and was discharged on 13.05.2006 (3 days) as seen from Ex.P2 discharge summary. It is also evident from the records that the Appellant/claimant had to undergo surgery whereby wound debridement was performed on him with K.wire fixation of crush injury on right foot with infracs injury, fracture of second Metatarsal bone and fracture of proximal phalanx of second and third toe for which split skin grafting was performed. Ex.P3 are the photos with C.D. which reveals the nature and gravity of injuries sustained by the claimant.

5. The Tribunal after examining the evidence available on record has passed the following award in favour of the Appellant/claimant:

Sl.No.	Heads	Award Amount
1	Loss of Income	25,138/-
2	Transportation	5,000/-
3	Extra Nourishment	5,000/-
4	Damage to clothes	1,000/-
5	Medical Expenses	5,000/-
6	Attender charges	5,000/-
7	Pain and suffering	25,000/-
8	Permanent Disability	60,000/-
9	Loss of Amenities	10,000/-
	Total	1,41,138/-

6. Before the Tribunal, the Appellant/claimant filed nine documents which were marked as Ex.P1 to Ex.P9 and two witnesses were examined on his side which includes himself as PW1 and the Doctor who examined him as PW2. On the side of the second respondent/insurance company neither any document was filed nor any witness examined before the Tribunal.

7. As seen from the materials and evidence available on record, the second respondent has not disputed the nature of injuries sustained by the Appellant/claimant. The Appellant was

a senior analyst and aged 23 years at the time of accident which happened on 23.04.2006. The salary slip of the Appellant/claimant was filed which was also marked as Ex.P4 and the same was accepted by the Tribunal and accordingly, the monthly income of the Appellant/claimant was fixed at Rs.25,138/-.

8. As seen from the injuries sustained by the Appellant/claimant which are grievous in nature involving crush injuries and fractures, certain amount of disfigurement would have been caused to the Appellant body. However, the Tribunal failed to take notice of this fact and has failed to award any compensation under this head. This Court is of the considered view that a sum of Rs.15,000/- will adequately compensate the Appellant towards compensation for disfigurement.

9. The Tribunal has awarded a sum of Rs.5,000/- towards Attender charges to the Appellant/claimant which in the considered view of this Court is too low. Since the Appellant/claimant had to undergo hospitalization for a long period of time as observed earlier by this Court, a sum of Rs.5,000/- awarded by the Tribunal towards Attender charges is unreasonable and the same will have to be enhanced to Rs.10,000/-.

10. The Tribunal has awarded a sum of Rs.10,000/- towards loss of amenities which in the considered view of this Court is too low. Accordingly, the same is enhanced to Rs.15,000/- from Rs.10,000/-.

11. The Tribunal has also awarded a sum of Rs.5,000/- towards extra nourishment which in the considered view of this Court is too low. Accordingly, the same is enhanced to Rs.10,000/- from Rs.5,000/-.

12. Insofar as the compensation awarded under various other heads namely, loss of income, transportation, damage to clothes, medical expenses, pain and suffering and permanent disability are concerned, the said compensation is a just compensation in the considered view of this Court and does not call for any interference.

13. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,41,138 to Rs.1,71,138/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified award amount (Rs.)
Loss of Income	25,138/-	25,138/-
Transportation	5,000/-	5,000/-
Extra Nourishment	5,000/-	10,000/-
Damage to clothes	1,000/-	1,000/-
Medical Expenses	5,000/-	5,000/-
Attender charges	5,000/-	10,000/-
Pain and suffering	25,000/-	25,000/-
Permanent Disability	60,000/-	60,000/-
Loss of Amenities	10,000/-	15,000/-
Disfigurement	-	15,000/-
Total	1,41,138/-	1,71,138/-

14. In the result, this Appeal is partly allowed by enhancing the amount awarded by the Tribunal from Rs.1,41,138 to Rs.1,71,138/-. The second respondent Insurance Company is directed to deposit the modified award amount after deducting the amount already deposited, if any, together with interest at the rate of 7.5% from the date of claim till the date of deposit and costs to the credit of MCOP.No.1933 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Appellant is permitted to withdraw the award amount along with accrued interest lying to the credit of MCOP.No.1933 of 2008 by filing an appropriate application. No costs.

WEB COPY

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nl

4/5

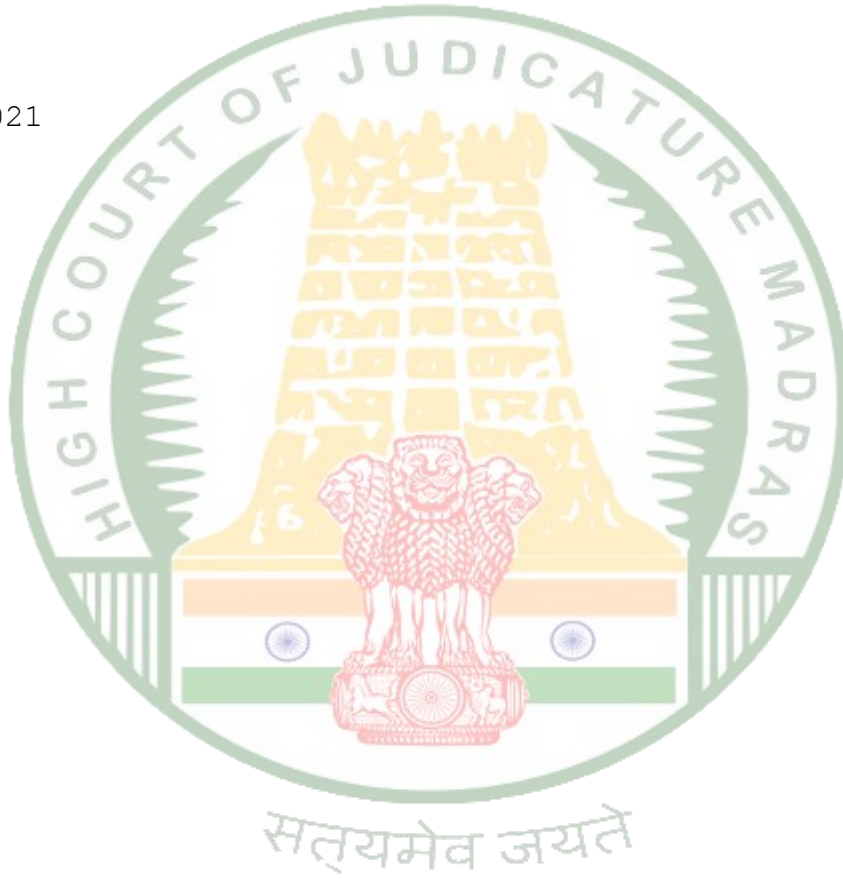
To

1.The Motor Accident Claims Tribunal Vith Judge
Vith Court of Small Causes Chennai

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

C.M.A.No.1581 of 2013

rsv(co)
aa07/01/2021



WEB COPY