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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.07.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1769 of 2012

Arumugam

... Appellant/Petitioner

vs.

1.C.Bhaskar @ Baskaran
2.The National Insurance Co. Ltd.,
No.751, Anna Salai,
III Floor,
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 08.02.2010 and made in MACTOP.No.3360 of 2002 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mrs.M.Malar

For Respondent 2 : Mr.D.Bhaskaran

For Respondent 1 : Exparte

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 08.02.2010 passed by the Motor Accident Claims Tribunal (VIth Court of Small Causes, Chennai) in MCOP.No.3360 of 2002.

2. The Appellant/claimant sustained injuries as a result of an accident which took place on 22.05.2001 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 to him.

3. The Motor Accident Claims Tribunal under the impugned



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award directed the second respondent to pay the Appellant/claimant a compensation of Rs.45,000/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of deposit and costs as detailed hereunder:

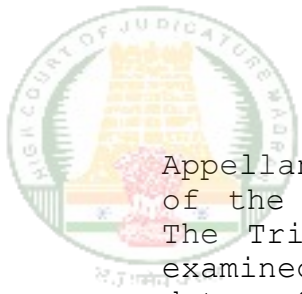
Heads	Award amount (Rs.)
Loss of income	6,000/- (for two months)
Transportation	500/-
Extra nourishment	500/-
Medical expenses	1,000/-
Pain and suffering	7,000/-
Disability of 30%	30,000/-
Total	45,000/-

4. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal.

5. Heard Mrs.M.Malar, 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 this Court.

6. Before the Tribunal, the claimant has filed five documents which were marked as Ex.P1 to Ex.P5 and two witnesses were examined on his side namely the Appellant/claimant 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.

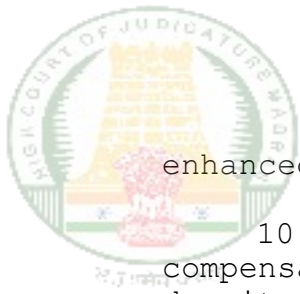
7. The Appellant/claimant sustained fracture of left occipital region with extra dural haematoma and post traumatic facial palsy. The Doctor who examined him has deposed before the Tribunal that due to the said injuries, the Appellant/claimant has been suffering from headache and vertigo and is required to do Anticonvulsant therapy. The Doctor PW2 has issued a disability certificate (Ex.P4) assessing the disability of the Appellant/claimant as a result of the accident at 20% partial permanent disability. As seen from the disability certificate Ex.P4, the same Doctor has also issued that for the left facial nerve palsy and left anticonvulsant therapy, the Appellant/claimant has suffered 25% disability and in all put together, he has suffered 45% partial permanent disability. Eventhough the Doctor has assessed the disability of the



Appellant/claimant at 45%, the Tribunal has fixed the disability of the Appellant/claimant at 30% partial permanent disability. The Tribunal has reduced the disability, since the Doctor has examined the Appellant/claimant only after nine years from the date of the accident. This Court is in agreement with the reasons given by the Tribunal for reducing the disability of the Appellant/claimant to 30% partial permanent disability by the Tribunal. The Tribunal has awarded a compensation of Rs.30,000/- towards 30% partial and permanent disability calculated at Rs1,000/- per percentage of disability which in the considered view of this court is a just compensation.

8. The Tribunal has assessed the notional monthly income of the Appellant/claimant at Rs.3,000/-, even though the Appellant/claimant in his claim petition had pleaded that he was self-employed and doing the business of car tinkering and earning Rs.200/- per day. The Tribunal has fixed the notional monthly income of the Appellant/claimant at Rs.3,000/-, since no documentary evidence was produced by him before the Tribunal to substantiate his claim that he was earning Rs.200/- per day at the time of the accident. This Court is in agreement with the finding of the Tribunal with regard to the notional monthly income of the Appellant/claimant. However, the Tribunal has awarded only a sum of Rs.6,000/- towards loss of income calculated for a period of two months at Rs.3,000/- per month which in the considered view of this Court is low. The Appellant/claimant has admittedly hospitalised for a period of 11 days as seen from the disability certificate issued by the Government Hospital, Chennai which was marked as Ex.P3. He has also suffered head injuries and the Doctor (PW2) has also deposed before the Tribunal that due to the injuries, he has been suffering from head ache, vertigo and anticonvulsant. The Doctor has also assessed the disability at 45%. After giving due consideration to all these factors, this court is of the considered view that the Appellant/claimant would have been unable to perform his regular work at least for a period of 4 months and he would have suffered loss of income for the said period. Therefore, this court enhances the compensation towards loss of income to the Appellant during the period of his treatment to Rs.12,000/- instead of Rs.6,000/- fixed by the Tribunal calculated at Rs.3,000/- per month for the period of four months.

9. The Tribunal has also awarded a meagre compensation towards transportation, extra nourishment and pain and suffering. After giving due consideration to the nature of injuries sustained by the Appellant/insurance company and his hospitalisation, this Court is of the considered view that the compensation awarded by the Tribunal towards transportation, extra nourishment and pain and suffering will have to be



enhanced to Rs.1,000/-, Rs.1,000/- and Rs.10,000/- respectively.

10. The Tribunal has also erroneously failed to award any compensation towards attender charges to the Appellant/ claimant, despite the fact that the Appellant/claimant was hospitalised for a period of 11 days. This court is of the considered view that a sum of Rs.2,000/- will be an adequate compensation to the Appellant/claimant towards attender charges which is being low awarded by this court.

11. The Tribunal has also failed to award any compensation towards loss of amenities to the Appellant/claimant which he is legally entitled to as per the settled practice. This Court awards a sum of Rs.3,000/- as compensation towards the said head.

12. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.45,000/- to Rs.60,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	6,000/- (for two months)	12,000/- (for four months)
Transportation	500/-	1,000/-
Extra nourishment	500/-	1,000/-
Medical expenses	1,000/-	1,000/-
Pain and suffering	7,000/-	10,000/-
Disability of 30%	30,000/-	30000/-
Attender charges		2,000/-
Loss of amenities		3,000/-
Total	45,000/-	60,000/-

Conclusion:

13. In the result, this Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.45,000/- to Rs.60,000/-. However, the rate of interest fixed



by the Tribunal at 7.5% per annum is confirmed. The second respondent is directed to deposit the modified award amount after deducting the amount already deposited if any together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.3360 of 2002 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.3360 of 2002 to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs. The Appellants are directed to pay requisite court fee if any for the enhanced award amount before obtaining a copy of this Judgment.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Judge, Small Causes Court,
Chennai, (Motor Accident Claims Tribunal)

Copy to:
The Section Officer,
VR Section, High Court,
Chennai.

+lcc to Mrs.M.Malar, Advocate, S.R.No.29060

C.M.A.No.1769 of 2012

CA(CO)
CB(25/08/2021)