

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1897 of 2012

Damodara Prabhu @ Prabhu

...Appellant/Petitioner

Vs.

1.U.Mani.

2.National Insurance Co. Ltd.,
No.378, Mint Street,
Chennai - 600 079.

(The first respondent/owner of the vehicle herein remained ex-parte in the proceeding before the trial court. Hence notice to the first respondent may be dispensed with) ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 30.08.2011 made in M.A.C.T.O.P.No.3732 of 2009 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondents : R1 - Exparte
Mrs.R.Sree Vidhya 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 30.08.2011 passed by the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai in MCOP.No.3732 of 2009.

2.Heard Mr.K.V.Muthuvisakan, learned counsel for the Appellant and Mrs.R.Sree Vidhya, 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 unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award has filed this appeal seeking enhancement.

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

Loss of income for 3 months	-	Rs.13,500/-
Transportation	-	Rs.6,000/-
Extra nourishment	-	Rs.5,000/-
Damage to clothes	-	Rs.500/-
Medical expenses	-	Rs.5,000/-
Pain and suffering	-	Rs.15,000/-
Disability of 30% at the rate of Rs.2,000/- per disability	-	Rs.60,000/-

Total		Rs.1,05,000/-

5.The Appellant/claimant sustained injuries on 19.09.2009 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent.

6.The Appellant/claimant has sustained the following injuries:

- (a) Sustained severe head injury and fracture
 - (b) both hand clavicle and plate was fixed
 - (c) multiple injuries in all over his body
- A surgery was also performed on 23.09.2009.

7.Before the Tribunal, the Appellant/claimant has filed 5 documents which were marked as Exs.P1 to 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 respondents, neither any document was filed nor any witness examined before the Tribunal.

8.The Appellant/claimant in his claim petition has pleaded that he was running a cool drinks shop earning Rs.500/- per day. He was aged 28 years at the time of the accident. The Tribunal however, assessed the monthly income of the Appellant/claimant at Rs.4,500/-. After giving due consideration to the year of the accident and the Appellant/claimant avocation, the assessment of the monthly income of the Appellant/claimant on notional basis at Rs.4,500/- is not a correct assessment in the considered view of this Court. Considering the fact that the Appellant/claimant was a proprietor of a cool drinks shop, this Court deems it fit to assess the monthly income of the Appellant/claimant at the time of the accident as Rs.6,500/- instead of Rs.4,500/- fixed by the Tribunal.

9.The Doctor who examined the Appellant/claimant (PW3) has issued the disability of the Appellant/claimant at 45% as seen from the disability certificate which was marked as Ex.P4 before

the Tribunal. However, the Tribunal on its own without any basis has reduced the disability from 45% to 30%.

10.The nature of injuries sustained by the Appellant/claimant as indicated supra will also reveal that there is no basis for reduction of disability than what was assessed by the Doctor. Accordingly, this Court retains the same percentage of disability assessed by the Doctor as found in Ex.P4 at 45%. The Tribunal has awarded a sum of Rs.60,000/- as disability compensation to the Appellant/claimant calculated at Rs.2,000/- per percentage of disability for the reduced 30% disability. Since, this Court retains the same assessment made by the Doctor (PW3) who has assessed the disability at 45%, the disability compensation is enhanced to Rs.90,000/- calculated for the 45% disability at Rs.2,000/- per percentage of disability.

11.The Appellant/claimant was hospitalized between 19.09.2009 and 06.10.2009 for a period of 18 days and was also taking outpatient treatment thereafter. Due to the injuries, the Appellant/claimant would have been unable to do his regular work and attend to his business for a minimum period of five months. However, the Tribunal has awarded a meagre compensation of Rs.13,500/- to the Appellant/claimant towards loss of income during the period of treatment calculated only for a period of two months which is not a correct assessment in the considered view of this Court.

12.As indicated above, the Appellant/claimant would have been unable to do his regular work for a minimum period of five months during the period of his treatment. Therefore, the compensation awarded under the impugned Award towards loss of income is enhanced to Rs.32,500/- from Rs.13,500/- calculated for a period of five months at Rs.6,500/- per month instead of Rs.13,500/- awarded by the Tribunal. The compensation awarded under the impugned Award towards transportation, extra nourishment and pain and suffering by the Tribunal is also low and it has to be necessarily enhanced to Rs.10,000/-, Rs.12,000/- and Rs.25,000/- respectively.

13.The Tribunal has also not awarded any compensation towards loss of amenities and attender charges which the Appellant/claimant is legally entitled to in view of the nature of his injuries. Accordingly, a sum of Rs.20,000/- is awarded to the Appellant/claimant towards loss of amenities and another sum of Rs.10,000/- is awarded to the Appellant/claimant towards attender charges. Insofar as the damage to clothing as well as medical expenses awarded by the Tribunal are concerned, the same is a just compensation and there is no scope for interference.

14.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,05,000/- to Rs.2,05,000/- by this Court in the following manner:

Loss of income for 5 months	-	Rs.32,500/-
Transportation	-	Rs.10,000/-
Extra nourishment	-	Rs.12,000/-
Damage to clothes	-	Rs.500/-
Medical expenses	-	Rs.5,000/-
Pain and suffering	-	Rs.25,000/-
Disability of 45% at the rate of Rs.2,000/- per disability	-	Rs.90,000/-
Loss of amenities	-	Rs.20,000/-
Attender charges	-	Rs.10,000/-

Total		Rs.2,05,000/-

15.In the result, the appeal is partly allowed. The second respondent is directed to deposit the modified award amount of Rs.2,05,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realisation, after deducting the amount already deposited if any, to the credit of MCOP No.3732 of 2009 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, 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 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(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
III Judge, Court of Small Causes, Chennai.

Copy to : The Section Officer, V.R. Section,
Madras High Court.

AKM/31.03.21/4P-3C/

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