

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED.18.08.2020  
CORAM  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE  
C.M.A.No.1996 of 2012

Ansar Basha

... Appellant

vs.

1.M/s.Veepas India,  
C,52, 4<sup>th</sup> Avenue Road, Guindy Industrial Estate,  
Guindy Chennai - 32.

2.The Branch Manager,  
HDFC General Insurance Company Ltd.,  
No.177 Raheja Towers, Mount Road,  
Chennai -2. ...Respondents  
(1<sup>st</sup> respondent was set exparte  
before the trial court, hence he is  
not necessary party in the above  
appeal. Hence, dispense with  
issuing notice to the 1<sup>st</sup>  
respondent.)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of  
the Motor Vehicles Act, 1988, against the Judgment and decree  
dated 12.08.2011 in MCOP.No.2752 of 2008 passed by the Motor  
Accident Claims Tribunal (Additional District Judge, Chennai).

For Appellant : Mrs.Revathy,  
for R.Nalliyappan

For Respondent 2 : Mrs.R.Sree Vidhya

R1- exparte

सत्यमेव जयते

JUDGMENT

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

This appeal has been filed by the claimant seeking  
enhancement of compensation awarded by the Tribunal under the  
impugned award dated 12.08.2012 passed by the Motor Accident  
Claims Tribunal (Additional District Judge, Chennai) in  
MCOP.No.2752 of 2008.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this Appeal. The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

| Heads                                             | Award Amount<br>(Rs.) |
|---------------------------------------------------|-----------------------|
| Disability at 35%                                 | 35,000/-              |
| Medical expenses                                  | 5,000/-               |
| Pain and suffering                                | 5,000/-               |
| Loss of income during the probable period of rest | 5,000/-               |
| Total                                             | 50,000/-              |

3. Heard Mrs. Revathy, learned counsel representing Mr.R.Nalliyappan, learned counsel for the Appellant and Mrs.R.Sree Vidhya, learned counsel for the second respondent. The first respondent remained exparte both before the Tribunal as well as this Court.

4. The Appellant/claimant has sustained fracture of left distal radius as a result of an accident which occurred on 05.07.2008 caused by a vehicle owned by the first respondent and insured with the second respondent.

5. The adverse finding of negligence against the driver of the insured vehicle has now attained finality, since no appeal has been filed by the second respondent insurance company against the said finding.

6. The only question that arises for consideration in this appeal is whether the Appellant/claimant is entitled for enhancement of compensation or not.

7. Before the Tribunal, the Appellant/claimant has filed 8 documents which were marked as Ex.P1 to Ex.P8 and two witnesses were examined on his side namely the Appellant 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.

8. The Appellant/claimant was aged 19 years and he was a mason, at the time of the accident. In his claim petition, he has pleaded that he was earning Rs.10,000/- per month. Since no documentary evidence has been produced by the Appellant/claimant in support of his employment, the Tribunal has awarded a sum of

Rs.5,000/- as loss of income to the Appellant/claimant during the period of his treatment on lumpsum basis which in the considered view of this Court is a correct assessment.

9. The Doctor who examined the Appellant/claimant has issued a disability certificate which was marked as Ex.P7 and it reveals that the Appellant/claimant had suffered 35 % disability. The Tribunal has accepted the same and has awarded a compensation of Rs.35,000/- towards the said disability calculated at Rs.1,000/- per percentage of disability. The accident happened in the year 2008 and considering the same, this Court is of the considered view that the disability compensation awarded by the Tribunal to the Appellant/claimant at Rs.35,000/- has to be necessarily enhanced as it is low. Accordingly, after giving due consideration to the year of the accident, the same is enhanced by this Court to Rs.70,000/- calculated at Rs.2,000/- per percentage of disability instead of Rs.35,000/- assessed by the Tribunal.

10. The Appellant/claimant was hospitalised only for a single day as seen from the discharge summary and discharge sheet issued by the hospital which were marked as Ex.P2. Insofar as the compensation awarded by the Tribunal towards pain and suffering is concerned, the same is low and it has to be enhanced to Rs.15,000/- from Rs.5,000/-.

11. Insofar as the quantum of compensation awarded by the Tribunal under various other heads are concerned, the same is confirmed as it is a just compensation.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified and enhanced in the following manner:

| Heads                                             | Amount Awarded by the Tribunal (Rs.) | Modified Award Amount (Rs.) |
|---------------------------------------------------|--------------------------------------|-----------------------------|
| Disability at 35%                                 | 35,000/-                             | 70,000/-                    |
| Medical expenses                                  | 5,000/-                              | 5,000/-                     |
| Pain and suffering                                | 5,000/-                              | 15,000/-                    |
| Loss of income during the probable period of rest | 5,000/-                              | 5,000/-                     |
| Total                                             | 50,000/-                             | 95,000/-                    |

Conclusion:

13. In the result, this Appeal is partly allowed by enhancing the award amount from Rs.50,000/- to Rs.95,000/-. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. The respondents are jointly and severally directed to deposit the modified award amount along with interest from the date of claim till the date of deposit and cost after deducting the amount already deposited if any to the credit of MCOP.No.2752 of 2008 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.2752 of 2008 to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-  
Asst.Registrar (CS VI)

/true copy/  
Sub Asst. Registrar

nl  
To

1.The Additional District Judge,  
Motor Accident claims Tribunal,  
Chennai

C.M.A.No.1996 of 2012

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