

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2006 of 2013

Thangadurairaj ... Appellant/ Petitioner

Versus

1. Viji Deva Dhoss

2. United India Insurance Company Ltd.,
No.134, Greams Road,
Chennai - 6.

.... Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order passed by the Motor Accidents Claims Tribunal at Chennai-III Court of Small Causes in MCOP No.4819 of 2011, dated 26.02.2013.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.P.Sankaranarayanan for R2
Not ready in notice - reg. R1

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 26.02.2013 passed by the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai in MCOP No.4819 of 2011.

2. The appellant is the claimant in MCOP No.4819 of 2011. It is his case that he sustained injuries on 25.05.2011, as a result of an accident caused by a TATA Safari Car bearing Registration No.TN-74-L-5708 owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai seeking a compensation of

Rs.7,00,000/- for the injuries sustained by him, as a result of the said accident.

3. The Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai by its award dated 26.02.2013 passed in MCOP No.4819 of 2011 directed the second respondent / Insurance Company to pay the appellant / claimant a sum of Rs.2,09,405/- together with interests and costs.

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

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	17,600
Transport to Hospital	3,000
Extra nourishment	5,000
Damage to clothing	1,000
Medical expenses	77,805
Future medical expenses	10,000
Pain and suffering	25,000
Permanent disability	70,000
Total	2,09,405

5. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

6. Heard Mr.S.Parthasarathy, learned counsel for the appellant and Mr.P.Sankaranarayanan, learned counsel for the second respondent / Insurance Company.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. Before the Tribunal, the appellant / claimant has filed eight documents, which were marked as Exs.P1 to P8 and two witnesses were examined on his side viz., 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.

9.The adverse finding of negligence on the part of the Driver of the insured vehicle has now attained finality, since no appeal has been filed by the respondents as against the said findings. The only question that needs to be considered by this Court is whether the appellant / claimant is entitled for enhancement of compensation or not.

10. The appellant / claimant has sustained bi-malleolar fracture in the right ankle, Joint, head injury and multiple injuries all over the body. Open reduction and internal fixation was done on him, as revealed by the disability certificate (Ex.P7) and the discharge summary (Ex.P1) issued by Franklin Hospital. No contra evidence has also been produced by the second respondent before the Tribunal to disprove the nature of injuries sustained by the appellant / claimant. The Doctor (PW2), who examined the appellant / claimant has also issued a disability certificate (Ex.P7) which reveals that the appellant / claimant has sustained 40% disability. However, the Tribunal on its own without any basis has reduced the disability to 35% from 40%. The appellant / claimant was hospitalised for a period of seven days between 25.05.2011 to 2.6.2011, as seen from the discharge summary (Ex.P1) issued by the said Hospital. The period of hospitalisation of the appellant / claimant on account of the injuries sustained by him as a result of the accident has also not been disputed by the respondents, as seen from the evidence available on record. This being the case, the Tribunal ought not to have reduced the disability as assessed by the Doctor from 40% to 35% without any basis. Therefore, this Court confirms the percentage of disability awarded by the Doctor under Ex.P7 and accordingly fixes the disability of the appellant / claimant at 40% instead of 35% erroneously fixed by the Tribunal. Accordingly, the compensation awarded under the head permanent disability is enhanced from Rs.70,000/- to Rs.80,000/-

11. Since internal fixation has to be removed in future to the appellant / claimant, the compensation awarded by the Tribunal, is low in the considered view of this Court. Accordingly, this Court after giving due consideration to the nature of injuries sustained by the appellant / claimant enhances the same to Rs.20,000/- from Rs.10,000/- towards future medical expenses.

12. Excepting for enhancing the disability compensation from Rs.70,000/- to Rs.80,000/- based on 40% disability instead of 35% disability assessed by the Tribunal and awarding an additional sum of Rs.10,000/- towards future medical expenditure, the compensation awarded by the Tribunal under various other heads, viz., loss of income, transport, extra nourishment, medical expenses and pain and suffering does not suffer any infirmity and there is no scope for interference.

13. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	17,600	17,600
Transport to Hospital	3,000	3,000
Extra nourishment	5,000	5,000
Damage to clothing	1,000	1,000
Medical expenses	77,805	77,805
Future medical expenses	10,000	20,000
Pain and suffering	25,000	25,000
Permanent disability	70,000	80,000
Total	2,09,405	2,29,405

14. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.2,09,405/- to Rs.2,29,405/- as indicated above. No costs.

15. The second respondent / Insurance Company is directed to deposit the entire award amount awarded by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.4819 of 2011, on the file of the Motor Accidents Claims Tribunal, (III 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 has to be paid by the appellant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The III Judge,
Court of Small Causes,Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.
+1cc to Mr.I.David Singh , Advocate SR.No. 26303

C.M.A.No.2006 of 2013

A.SK(06.01.2021)