

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2149 OF 2013

Sakthivel

... Appellant/Petitioner

..Vs..

1. P.Nagaraj

2. The New India Assurance Co. Ltd.,
Thiruvottiyur High Road, II Floor
Tondiarpet, Chennai-21.

3. M/s.Intergrated Service Point Pvt. Ltd.,
No.48, Mugappair Industrial Estate
J.J Nagar West, Chennai-37.

4. Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road, Chennai-600 014.

... Respondents/Respondents

(1st and 3rd respondents were set exparte
before the Tribunal and notice may be
dispensed with)

Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P No.24 of 2009 dated 05.03.2012 on the file of the Motor Accident Claims Tribunal (III Fast Track Court), Chennai, as prayed for with interest and cost.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.M.Krishnamoorthy for R2
Mr.M.B.Raghavan for R4
R1 & R3 - 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 05.03.2012 passed by the Motor Accident Claims Tribunal/ Additional District and Sessions Court, (III Fast Track Court), Chennai, in M.C.O.P No.24 of 2009.

2. The Appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

3. The Tribunal, under the impugned award, has awarded compensation of Rs.33,750/- together with interest and cost to the Appellant/claimant as detailed hereunder:

Heads	Award Amount (Rs.)
Pain and sufferings and extra nourishment	30,000/-
Transport Charges	3,750/-
Total	33,750/-

4. The vehicle owned by the first respondent and insured with the second respondent was the cause of the accident which resulted in the Appellant/claimant sustaining injuries. The Tribunal has also given a conclusive finding that only due to the fault of the vehicle insured with the second respondent, the accident had happened. The said finding has also attained finality, since no appeal has been filed by the respondents.

5. The only question that arises for consideration in this appeal is whether the Appellant/claimant is entitled for enhancement of compensation?

6. The Appellant/claimant was a car driver, aged 28 years at the time of the accident. The details of the injuries sustained by the Appellant/claimant are as follows: (a) Abrasion over right cheek, (b) Temporal Polar EPH and (c) Simple Injuries all over the body.

7. In the claim petition filed before the Tribunal, the Appellant/claimant had made a claim for Rs.2,00,000/-. However, the Tribunal under the impugned award has awarded only a compensation of Rs.33,750/- as per the details given above.

8. The Appellant/claimant has also examined the Doctor who examined him as PW2. The Doctor has issued a disability certificate Ex.P11 which reveals that the Appellant/claimant has sustained 45% disability. However, the Tribunal on its own totally rejected the disability certificate, Ex.P11 and has not awarded any compensation towards the disability suffered by the Appellant/claimant as a result of the accident. Eventhough, the disability certificate Ex.P11 may not be a correct assessment, it is an admitted fact that the Appellant/claimant has sustained injuries as referred to supra. This being the case, the Tribunal ought to have granted some amount of compensation towards the said disability suffered by the Appellant/claimant.

9. In the considered view of this Court, after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the Appellant/claimant at 10%. The year of the accident is 2008. After giving due consideration to the year of the accident, the disability compensation of Rs.20,000/- is awarded to the Appellant/claimant by this Court calculated at Rs.2000/- per percentage of disability.

10. As seen from the impugned award, the Tribunal has not assessed the monthly income of the Appellant/claimant. Being a driver, and after giving due consideration to the year of the accident, this Court is of the considered view that the Appellant/claimant would have at least earned Rs.7000/- per month in the year 2008, when the accident had happened. Accordingly, the monthly income of the Appellant/claimant is fixed at Rs.7000/- by this Court. The Tribunal has not awarded any compensation to the Appellant/claimant towards loss of income during the period of the treatment. The injuries sustained by the Appellant/claimant would have certainly disabled him from doing his regular work as a driver for at least two months. Therefore, this Court awards a sum of Rs.14,000/- as compensation towards loss of income during the period of treatment calculated for two months at Rs.7000/- per month.

11. In fact, the Appellant/claimant was also hospitalized for a period of five days as seen from the discharge summary

issued by the hospital and it was marked as Ex.P4 and Ex.P6 before the Tribunal. Since the Tribunal under the impugned award has not separately quantified the compensation payable towards pain and sufferings and extra nourishment charges, the same is separately quantified by this Court in the following manner and the same is also enhanced. Insofar as pain and suffering is concerned, this Court deems it fit a sum of Rs.15,000/- and towards extra nourishment, a sum of Rs.5,000/- will be an adequate compensation. Insofar as the transportation charges are concerned, the Tribunal has awarded a compensation of Rs.3,750/- towards the said head which is enhanced to Rs.5,000/- by this Court.

12. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.33,750/- to Rs.59,000/- by this Court as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Award Amount (Rs.)
Loss of Income during the period of treatment	...	14,000/- (Rs.7000/- x 2)
Pain and suffering	30,000/-	15,000/- 5,000/-
Extra Nourishment		
Transport Charges	3,750/-	5,000/-
Permanent Disability (10% x Rs.2000)	...	20,000/-
Total	33,750/-	59,000/-

Conclusion:

13. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed.

14. It is represented by the learned counsel for the second respondent/Insurance Company that the entire award amount has already been deposited and the same was withdrawn by the Appellant / claimant. The second Respondent/Insurance Company is directed to deposit the balance award amount of Rs.25,250/- along with interest and costs to the credit of MCOP.No.24 of 2009 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 as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

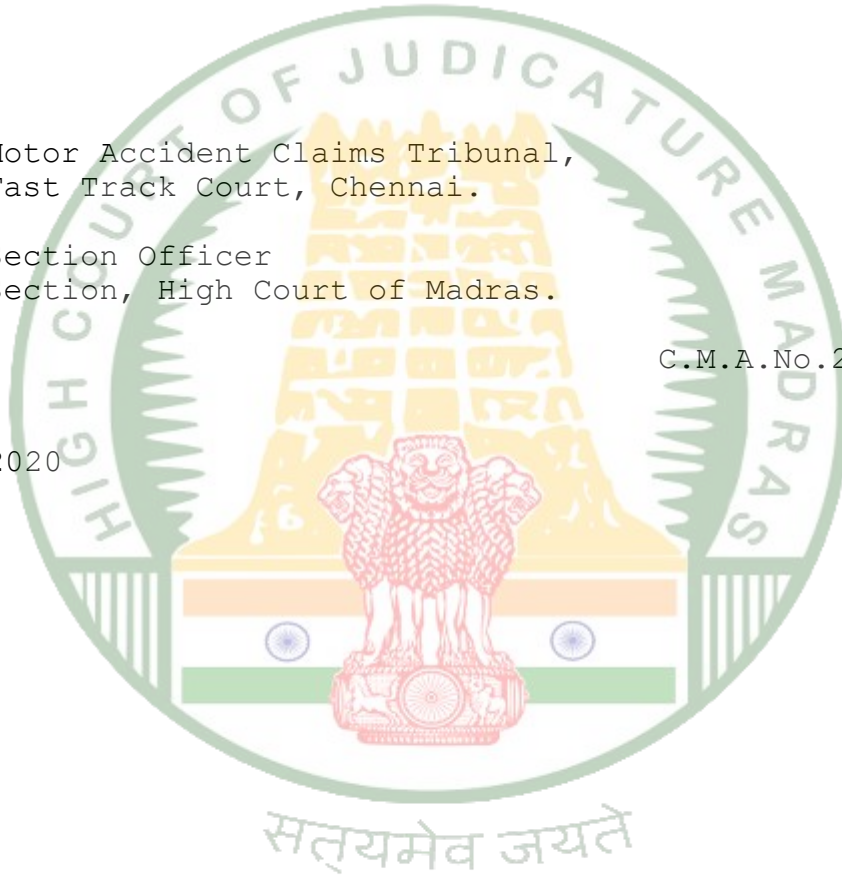
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To

1. The Motor Accident Claims Tribunal,
III Fast Track Court, Chennai.
2. The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.2149 of 2013

SAI (CO)
CS/02/09/2020



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