



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2739 of 2012

Muniyandi ..... Appellant/Petitioner  
Versus

1.P.Suresh  
(Remained exparte in the Tribunal.  
Notice in the above appeal may be  
dispensed with)

2. Royal Sundaram Alliance Insurance  
Company Limited,  
Sundaram Towers,  
No.45 & 46, Whites Road,  
Chennai - 60 014.

.... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 27.01.2012 in M.C.O.P. No.1556 of 2010 on the file of the Motor Accidents Claims Tribunal/VI Judge, Court of Small Causes / Chennai.

For Appellant : Ms.Ramya V. Rao

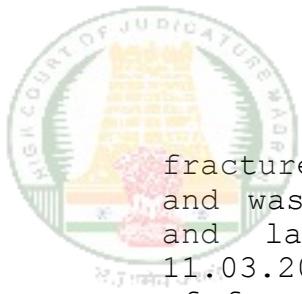
For Respondents : Mr.Rajadurai for  
M/s.N.Vijayaraghavan for R2  
R1 - Exparte

#### 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 27.01.2012 passed by the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes / Chennai in MCOP No.1556 of 2010.

2. The appellant has filed this appeal seeking enhancement of compensation. According to the appellant, the Tribunal failed to appreciate the gravity of injuries sustained by him, as a result of the accident caused by the insured vehicle. It is his case that he has sustained



fracture of both Tibia and fibula and other multiple injuries and was taken to Chettinad Hospital for immediate treatment and later treated at SRM Hospital from 14.02.2008 to 11.03.2008. According to him, due to the delayed malunion of fracture Tibia for which, IL Nailing and bone grafting was done, he was hospitalised during the aforementioned period. It is also the case of the appellant that he was admitted once again in the same hospital on 29.03.2008 and treated for non union of Rt. Tibia and was discharged on 04.04.2008 and was treated as an outpatient subsequently on several dates. It is his case that he became permanently / partially disabled due to the injuries and therefore, he is unable to work as before. According to him, he finds difficulty in walking, standing, climbing stairs, squatting on floor, using Indian toilets etc. According to him, despite the Doctor assessing his disability at 45%, the Tribunal has arbitrarily reduced the same to 35% under the impugned award. It is also his case that for a long period of time after the accident, he lost his earning capacity due to the said injuries sustained by him, as a result of the accident. It is his case that the Tribunal has awarded a meagre compensation under the various heads of compensation.

3. The details of the impugned award are as follows :-

| Heads                                                      | Amount awarded by the Tribunal (Rs.) |
|------------------------------------------------------------|--------------------------------------|
| Loss of income for 3 months at the rate of Rs.4,500/- p.m. | 13,500/-                             |
| Transportation                                             | 7,000/-                              |
| Extra nourishment                                          | 5,000/-                              |
| Medical expenses                                           | 13,126/-                             |
| Future medical expenses                                    | 5,000/-                              |
| Attender Charges                                           | 1,000/-                              |
| Pain and sufferings                                        | 25,000/-                             |
| Disability at 35% at Rs.2,000/- per percentage             | 70,000/-                             |
| Total                                                      | 1,39,626/-                           |

4. Heard Ms.Ramya V. Rao, learned counsel for appellant and Mr.Rajadurai, learned counsel for the second respondent. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

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



6. Before the Tribunal, the appellant / claimant has filed twelve documents, which were marked as Exs.P1 to P12 and two witnesses were examined on his side viz., the appellant himself and his Doctor who examined him as PW2. On the side of the second respondent / Insurance Company, neither any document was filed nor any witness was examined before the Tribunal.

7. As seen from the evidence available on record before the Tribunal, the nature of injuries sustained by the appellant / claimant has not been disputed by the second respondent / Insurance Company. As rightly contended by the appellant / claimant for a long period of time between 14.02.2008 and 11.03.2008, i.e. for a period of 25 days and thereafter once again for a period between 29.03.2008 to 04.04.2008, i.e. for a period of seven days, the appellant / claimant was hospitalised and was taking treatment for his injuries. The discharge summary issued by the SRM Hospital has also been marked as Exs.P2 and P3 before the Tribunal. Thereafter, the appellant / claimant had to be treated once again as an outpatient by the same hospital, for which also sufficient proof has been filed viz., OP records issued by the SRM Hospital, which has been marked as Ex.P4. The appellant / claimant due to his long hospitalisation for the injuries sustained by him, as indicated earlier in this order, would he necessarily have sought the assistance of an Attender.

8. The Tribunal under the impugned award has assessed the monthly notional income of the appellant / claimant at Rs.4,500/-. However, the Tribunal has awarded only a sum of Rs.13,500/- as loss of income to the appellant / claimant, which was calculated for a period of three months only. As observed earlier by this Court, the appellant / claimant having sustained injuries which required hospitalisation for a quite a long period, he would certainly have been unable to perform his regular work for a long period of time. Therefore, the loss of income awarded by the Tribunal only for a period of three months to the appellant / claimant is too low and the same will have to be enhanced by assessing the same for a period of nine months. Therefore, the compensation awarded by the Tribunal towards loss of income is enhanced from Rs.13,500/- to Rs.40,500/- calculated at the rate of Rs.4,500/-p.m., for a period of nine months.

9. The compensation awarded by the Tribunal under the impugned awards towards Transportation, Extra Nourishment, future medical expenses, Attender charges are also low, considering the nature of injuries as well as the period of hospitalisation of the appellant / claimant. Accordingly, the compensation towards Transportation is enhanced from Rs.7,000/- to Rs.10,000/-; Extra Nourishment from Rs.5,000/- to Rs.10,000/-; Attender charges from Rs.1,000/- to Rs.15,000/- and Future medical expenses from Rs.5,000/- to Rs.10,000/-.



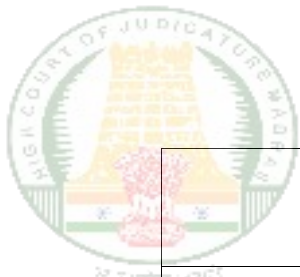
10. Insofar as the compensation awarded by the Tribunal towards Permanent disability is concerned, the Tribunal without any basis has reduced the disability ignoring Ex.P11, the Disability Certificate issued by the Doctor, who examined the appellant / claimant and fixed his disability at 45%. However, the Tribunal has on its own without any evidence to the contrary has reduced the disability of the appellant / claimant to 35%. Considering the nature of injuries sustained by the appellant and the long period of hospitalisation, which is evidenced by the documents, which were marked as Exhibits before the Tribunal, there was no necessity for the Tribunal to reduce the disability of the appellant / claimant from 45% to 35%. In such circumstances, this Court is in agreement with the Disability Certificate (Ex.P11), which has assessed the disability of the appellant / claimant at 45%. The Tribunal has awarded compensation towards Permanent disability calculated at Rs.2,000/- per percentage of disability which is accepted by this Court. However, the disability fixed by this Court is 45% as per the Disability Certificate Ex.P11 instead of 35% assessed by the Tribunal. Accordingly, the permanent disability is enhanced to Rs.90,000/- from Rs.70,000/- by this Court.

11. The Tribunal has also not awarded any compensation towards loss of amenities, which the appellant / claimant is legally entitled to, as per the settled practice. This Court therefore awards Rs.20,000/- as loss of amenities to the appellant / claimant.

12. The compensation awarded by the Tribunal under the heads of a) Medical expenses, and b) Pain and suffering are also a reasonable sum and hence, this Court confirms the same.

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<br>* for 3 months at the rate of Rs.4,500/- p.m.<br>#for 9 months at the rate of Rs.4,500/- p.m. | 13,500/-<br>*                        | 40,500/-<br>#                      |
| Transportation                                                                                                  | 7,000/-                              | 10,000/-                           |
| Extra nourishment                                                                                               | 5,000/-                              | 10,000/-                           |
| Medical expenses                                                                                                | 13,126/-                             | 13,126/-                           |
| Future medical expenses                                                                                         | 5,000/-                              | 10,000/-                           |



| Heads                                                                                                      | Amount awarded by<br>the Tribunal<br>(Rs.) | Amount awarded by<br>this Court<br>(Rs.) |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------|
| Attender Charges                                                                                           | 1,000/-                                    | 15,000/-                                 |
| Pain and sufferings                                                                                        | 25,000/-                                   | 25,000/-                                 |
| Disability<br>** at 35% at<br>Rs.2,000/- per<br>percentage<br>## at 45% at<br>Rs.2,000/- per<br>percentage | 70,000/-<br>**                             | 90,000/-<br>##                           |
| Loss of amenities                                                                                          | -                                          | 20,000/-                                 |
| Total                                                                                                      | 1,39,626/-                                 | 2,33,626/-                               |

14. In the result, this appeal filed by the Appellant / claimant stands partly allowed by enhancing the compensation from Rs.1,39,626/- to Rs.2,33,626/-, as indicated above. No costs.

15. The second respondent / Insurance Company is directed to deposit the entire award amount as awarded by this Court together with interest at 7.5% p.a. from the date of numbering of the claim petition till the date of realization and costs, less the amount, if any, already deposit to the credit of MCOP No.1556 of 2010, 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 amount to the bank account of the appellant / claimant through RTGS within a period of two weeks thereafter. Necessary Court fee, if any to be paid by the appellant before receiving the copy of this Judgment.

Sd/-  
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

vsi2

To

The Motor Accidents Claims Tribunal,  
VI Judge, Court of Small Causes / Chennai.

C.M.A.No.2739 of 2012

SSV(CO)

SMY(08/08/2021)  
<https://hcservices.courts.gov.in/hcservices/>