

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2874 of 2012

S.Manikandan

...Appellant/Petitioner

vs.

1.S.Kaleel Rahman

2.ICICI Lombard General Insurance Company Ltd.,
No.84/85, Arhant Plaza,
Wall Tax Road, Chennai - 103.

(1st Respondent was exparte before the Tribunal hence
notice may be dispense with)Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the Judgment and decree dated
14.09.2011 and made in M.C.O.P.No.888 of 2009 on the file of
the Motor Accident Claims Tribunal, Fast Track Court No.II,
Poonamallee.

For Appellant : Mr.M.Siva Kumar
for Mr.V.Jagannathan
For Respondents : R1 - exparte
Ms.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
14.09.2011 passed by the Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court No.II, Poonamallee
in MCOP.No.888 of 2009.

2.Heard M.Siva Kumar, learned counsel for the Appellant and
Ms.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 has filed this appeal
seeking enhancement.

4.The adverse finding of negligence as against the driver of the insured vehicle has now attained finality since no appeal has been filed by the respondents against the said finding. The only question that arises for consideration in this appeal is whether the Appellant/claimant is entitled for enhancement of compensation or not.

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

For 50% disability	-	Rs.1,00,000/-
Pain and suffering	-	Rs. 30,000/-
Transport expenses	-	Rs. 10,000/-
Extra nourishment	-	Rs. 20,000/-
Attender charges	-	Rs. 10,000/-
Medical bills	-	Rs.2,93,750/-

Total		Rs.4,63,750/-

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

- (a) Severe punctured wound in the lower abdomen
- (b) Severe lacerated wound around anus
- (c) Severe abrasions and fracture of left wrist
- (d) Severe bleeding injuries (sutured) on the head
- (e) Severe abrasions on the left side of the face, chin, both forearms, hands, left thigh, both knees and feet.
- (f) Fracture in Spinal Cord.

As seen from the above, the Appellant/claimant has sustained grievous injuries in the spinal cord also.

7.Before the Tribunal, the Appellant/claimant has filed 19 documents which were marked as Exs.A1 to A19 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 Doctor, PW2 who examined the Appellant/claimant has assessed the disability of the Appellant/claimant at 50% as seen from the disability certificate Ex.A18.

9.The nature of injuries sustained by the Appellant/claimant has not been disputed by the respondents before the Tribunal as seen from the evidence available on record.

10.The Tribunal has awarded a sum of Rs.1,00,000/- towards disability compensation to the Appellant/claimant calculated at Rs.2,000/- per percentage of disability. The medical bills

which were marked as Exs.A6 and A7 totally amounts to Rs.2,93,750/-. The medical expenses incurred by the Appellant/claimant will reveal that the injuries sustained by the Appellant/claimant are grievous injuries and would have made the Appellant/claimant immobile for a long period of time. Apart from the medical expenses incurred by him, he may have to spend some more amount of money towards his future medical expenses. The Tribunal has not awarded any compensation to the Appellant/claimant towards future medical expenses that will have to be incurred by the Appellant/claimant in view of the grievous spinal cord injuries sustained by him.

11.The year of the accident is 2009. However, the Tribunal has assessed the disability compensation of the Appellant/claimant calculated at Rs.2,000/- per percentage of disability which in the considered view of this Court is low. Considering the nature injuries sustained by the Appellant/claimant and the year of the accident, this Court assesses the disability compensation at Rs.1,50,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability assessed by the Tribunal. Accordingly, the disability compensation is enhanced to Rs.1,50,000/- from Rs.1,00,000/- fixed by the Tribunal.

12.Insofar as the future medical expenses are concerned, as indicated earlier, the Tribunal has erroneously failed to award any compensation towards the said head and this Court deems it fit to award a sum of Rs.25,000/- as compensation to the Appellant/claimant towards future medical expenses. Insofar as the compensation awarded by the Tribunal under the heads (a) pain and suffering, (b) transportation, (c) extra nourishment and (d) attender charges which are Rs.30,000/-, Rs.10,000/-, Rs.20,000/- and Rs.10,000/- respectively are concerned, the same is a just compensation in the considered view of this Court and therefore, the said assessment is confirmed. However, the Tribunal has failed to award any compensation to the Appellant/claimant towards loss of amenities despite the fact that the Appellant/claimant sustained grievous spinal cord injuries which would have affected his mobility for a long period of time and therefore, this Court awards a sum of Rs.20,000/- as compensation to the Appellant/claimant towards loss of amenities.

13.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is enhanced from Rs.4,63,750/- to Rs.5,58,750/- in the following manner:

Future medical exp.	-	Rs. 25,000/-
For 50% disability	-	Rs.1,50,000/-
Pain and suffering	-	Rs. 30,000/-
Loss of amenities	-	Rs. 20,000/-

Transport expenses	-	Rs. 10,000/-
Extra nourishment	-	Rs. 20,000/-
Attender charges	-	Rs. 10,000/-
Medical bills	-	Rs.2,93,750/-

Total		Rs.5,58,750/-

14.In the result, the appeal is partly allowed. The second respondent is directed to deposit the modified award amount of Rs.5,58,750/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount already deposited if any, to the credit of MCOP No.888 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Poonamallee, 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(CCC)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court No.II,
Poonamallee.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to M/s.V.Jaganathan, Advocate SR.26920

C.M.A.No.2874 of 2012

RJI (CO)
CB(16/03/2021)