

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHUSE

CMA No.3083 of 2012

K.Gopal

.. Appellant/Petitioner

Vs.

1. B.Hariharan
(R1 remained exparte
before the Tribunal)

2. The National Insurance Co. Limited
No.751, Anna Salai
Chennai.2

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.08.2009 made in MACTOP No.4170 of 2004 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

For Appellant : Ms.M.Malar

For Respondents : Ms.K.Saraswathi for R2
Exparte - R1

O R D E R

(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 26.08.2009 passed by the Motor Accident Claims Tribunal/ VI Small Causes Court, Chennai in MCOP No.4170 of 2004.

2. The Appellant had sustained injuries on 01.03.2004 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accident Claims Tribunal and the Motor Accident Claims Tribunal, under the impugned award dated 26.08.2009 passed in MCOP No.4170 of 2004 directed the respondents to pay the Appellant, a compensation of Rs.44,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of Income	9,000/-
Transport to Hospital	1,000/-
Extra Nourishment	1,000/-
Pain and suffering	8,000/-
Permanent disability	25,000/-
Total	44,000/-

3. The Appellant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking for enhancement.

4. Before the Tribunal, the Appellant/claimant has filed five documents which were marked as Ex.P1 to Ex.P5 and two witnesses were examined 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.

5. The Doctor who assessed the disability of the Appellant/claimant has assessed his disability at 30%. The Appellant had sustained a fracture on his left leg and multiple injuries all over his body. He was hospitalized for a period of 10 days from 01.03.2004 to 10.03.2004 as seen from the discharge summary which was marked as Ex.P3 before the Tribunal.

6. The Appellant/claimant was a driver and in his claim petition, he had claimed that he was earning Rs.4,000/- per month. However, the Tribunal has fixed the monthly income of the Appellant/claimant at Rs.3000/-. Since the Appellant/claimant has not produced any documentary evidence in support of his monthly income, the assessment made by the Tribunal at Rs.3,000/- is a correct assessment, in view of the fact that the year of the accident was 2004. However, the Tribunal without any basis has reduced the disability of the Appellant/claimant to 25% instead of 30% fixed by the Doctor (PW2). There must be sufficient evidence placed before the Tribunal by the respondents for such a reduction. However, as seen from the evidence available on record, the respondents have not placed any evidence before the Tribunal to enable the Tribunal to reduce the percentage of the disability of the Appellant/claimant from 30% to 25%. The Tribunal has awarded Rs.25,000/- as disability compensation to the Appellant/claimant calculated at Rs.1000/- per percentage of disability. Eventhough the basis for such a calculation is correct, the

Tribunal ought to have calculated the disability for 30% disability instead of 25%. Accordingly this Court enhances the disability compensation to Rs.30,000/- instead of Rs.25,000/- awarded by the Tribunal.

7. The Tribunal has also not awarded any compensation towards attender charges, loss of amenities and medical expenses. Having sustained fracture and having been hospitalized for 10 days, the Appellant/claimant ought to have been compensated towards the aforementioned heads by the Tribunal. This Court is of the considered view that a sum of Rs.2,500/- towards attender charges, another sum of Rs.2,500/- towards loss of amenities and another sum of Rs.2,500/- towards medical expenses will adequately compensate the Appellant/claimant. Accordingly, this Court awards a sum of Rs.2,500/- each towards the heads namely attender charges, loss of amenities and medical expenses as compensation.

8. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.44,000/- to Rs.56,500/- as detailed below:

Heads	Amount awarded by the Tribunal	Award Amount (Rs.)
Loss of Income	9,000/-	9,000/-
Transport to Hospital	1,000/-	1,000/-
Extra Nourishment	1,000/-	1,000/-
Pain and suffering	8,000/-	8,000/-
Permanent disability	25,000/-	30,000/-
Attender charges	...	2,500/-
Loss of Amenities	...	2,500/-
Medical Expenses	...	2,500/-
Total	44,000/-	56,500/-

Conclusion:

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. The second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.56,500/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.4170 of 2004 within a period of four weeks from the date of receipt of a copy of

this Judgement. 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

To

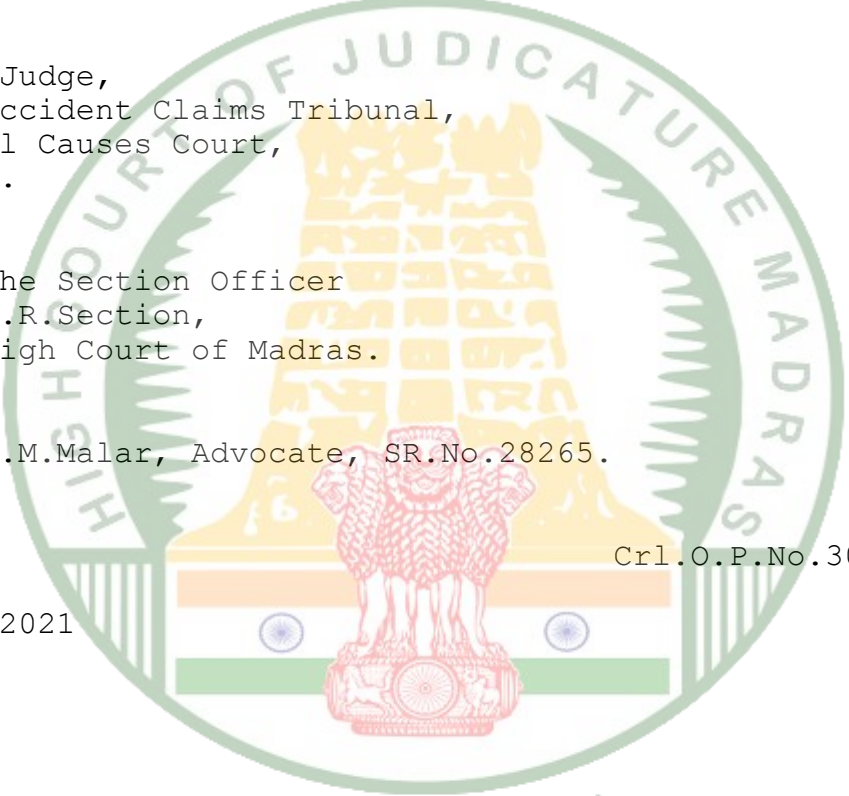
The IV Judge,
Motor Accident Claims Tribunal,
IV Small Causes Court,
Chennai.

Copy to: The Section Officer
V.R.Section,
High Court of Madras.

+1cc to Ms.M.Malar, Advocate, SR.No.28265.

NMI (CO)
CSR 23.04.2021

Cr1.O.P.No.3083 of 2012



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