

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3311 of 2012

P.Irfan Ahmed

... Appellant/ Petitioner

Versus

1. S. Shihas

2. The Oriental Insurance Co. Ltd.

Third Party Cell, II Floor,

No.115, Broadway Road,

Chennai - 108.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.3216 of 2009, dated 28.03.2012 on the file of the II Judge, Small Causes Court, Motor Accident Claims Tribunal (II Small Causes Court), Chennai.

For Appellant

: Mr.Ravindran

For Respondents

: Mr.S. Arunkumar for R2

R1 - Ex-parte

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 28.03.2012 passed by the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai in MCOP No.3216 of 2009.

2. The appellant / claimant sustained injuries on 28.02.2009 as a result of the accident caused by a vehicle owned by the first respondent and insured with the second respondent.

3. The appellant / claimant preferred a claim before the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai seeking compensation for the injuries sustained by him as a result of the afore mentioned accident.

4. The Motor Accidents Claims Tribunal by its award dated 28.02.2012 directed the second respondent / Insurance Company to pay the appellant / claimant a sum of Rs.5,28,400/- as compensation for the injuries sustained by him due to the accident.

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

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earning power/capacity	1,94,400
Permanent Disability	60,000
Loss of income during treatment	12,000
Transport charges	3,000
Extra nourishment	3,000
Damage to clothes and articles	1,000
Medical expenses	2,30,000
Pain and suffering	25,000
Total compensation	5,28,400

6. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking enhancement.

7. Heard Mr.Ravindran, learned counsel for the appellant and Mr.S.Arunkumar, learned counsel for the second respondent. The first respondent remained ex-parte both before the Tribunal and before this Court.

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

9. Before the Tribunal, the appellant / claimant has filed 22 documents, which were marked as Exs.P1 to P22 and five witnesses were examined viz., the appellant / claimant himself as PW1 and his Doctors, were examined as PW2, PW3 and PW4. An eye witness to the accident was examined as PW5. On the side of the respondents neither any document was filed nor any witness was examined before the Tribunal.

10. The findings as regards the negligence of the Driver of the insured vehicle has now become final as no appeal has been filed by the respondents challenging the said findings. The only question that has to be decided by this Court is whether the quantum of compensation assessed by the Tribunal is a just compensation or not and whether the appellant /

claimant is entitled for enhancement.

11. The appellant / claimant was aged 19 years and was working at Gulnaz leathers, Chennai - 3, earning a monthly income of Rs.3,000/-. He sustained fracture of temporal bones as well as in squamous portion fracture (mandible and intra ventricular hemorrhage in right lateral ventricle and multiple injuries all over the body, as a result of the accident caused by the insured vehicle. Exp2 is the Discharge summary of Apollo Special Hospital, Chennai, which reveals that the appellant / claimant was admitted in the said hospital on 28.02.2009 and was discharged only on 16.03.2009. It also reveals that he underwent a surgery on 06.03.2009. The nature of the injuries sustained by the appellant / claimant has not been disputed by the second respondent / Insurance company, as seen from the evidence available on record before the Tribunal. The appellant / claimant has also filed scan reports (Exs.P3 and P4), X ray report (skull), dated 09.03.2009 (Ex.P5) Xray report, dated 09.03.2009 (Ex.P6), Dental treatment record of Apollo Dental centre (Ex.R7) & Op chit with prescriptions of Apollo Hospital, Chennai (Ex..P8) and OP chit of Government General Hospital, Chennai (Ex.P9), which reveals that the appellant / claimant has sustained grievous injuries all over his body including his head. As per Ex.P9, the appellant / claimant diagnosed for post traumatic head injuries and he had pain and was unable to use right hand and right leg and was suffering from poor speech.

12. The Doctors viz., Dr.Saichandran (PW2), Dr.T.S.Kalkura (PW3) and Dr.Thiagarajan (PW4) have deposed before the Tribunal that the appellant / claimant has suffered partial / permanent disability at 25%, 35% and 45% respectively with regard to the particular limb referred to by them. The Tribunal has assessed the total disability at 90% and reduced the 1/3rd with reference to whole body and accordingly, fixed the percentage of disability with regard to the entire body at 30%. The Tribunal by applying the multiplier method for the 30% functional disability with regard to the whole body has assessed the loss of earning power of the appellant / claimant at Rs.1,94,400/- (Rs.3000 x 12 x 18 x 30%). The Disability certificates given by the respective Doctors, who examined the appellant / claimant has also been marked as Ex.P16, Ex.P18, Ex.P20 respectively before the Tribunal. The various scans and xrays taken by the appellant has also been marked as Exhibits before the Tribunal. The Discharge summary Ex.P2 issued by the hospital also confirms that the appellant / claimant was hospitalised from 28.02.2009 to 16.03.2009. As seen from the evidence available on record, the nature of injuries sustained by the appellant / claimant has not been disputed by the second respondent / Insurance Company before the tribunal.

13. This Court has also examined the disability certificates issued by the respective Doctors and has also

duly considered the oral evidence adduced by the Doctors. After considering the same, this Court is of the considered view that the Tribunal ought to have fixed the whole body functional disability of the appellant / claimant due to the injuries sustained by him at 40% instead of 30% fixed by the Tribunal. The injuries sustained by the appellant / claimant are indeed grievous in nature which would have certainly disabled him to perform his regular work for a long period of time. The Tribunal has not awarded loss of future prospects to the appellant / claimant, which he is legally entitled to considering the fact that he has sustained grievous injuries which has immobilized him for a long period of time causing loss of earning to him. Accordingly, the loss of future prospects at 40% is awarded to the appellant / claimant in addition to assessing his whole body functional disability at 40% instead of 30% assessed by the Tribunal.

14. The Tribunal has also awarded only a sum of Rs.12,000/- as compensation towards loss of earning during the period of treatment calculated for a period of four months, which in the considered view of this Court is too low. This Court after considering the nature of the injuries sustained by the appellant / claimant which has not been disputed by the second respondent / Insurance Company awards a sum of Rs.36,000/- as compensation to the appellant / claimant towards loss of earning during the period of his treatment calculated at Rs.3,000/- p.m. for a period of one year.

15. The Tribunal has also awarded only a sum of Rs.3,000/- as compensation towards transportation another sum of Rs.3,000/- towards extra nourishment charges which is enhanced by this Court to Rs.10,000/- and Rs.10,000/- respectively since the compensation awarded by the Tribunal under the said heads are low.

16. In respect of the compensation awarded towards permanent disability by the Tribunal at Rs.60,000/- and Rs.25,000/- towards pain and suffering is concerned it is a just compensation and there is no scope for interference.

17. However, the Tribunal has not awarded any compensation towards future medical expenses, which ought to have been awarded considering the nature of injuries sustained by the appellant / claimant. Accordingly, this Court awards a sum of Rs.10,000/- towards future medical expenses for the appellant / claimant.

18. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning power/capacity * Rs.3000 x 12 x 18 x 30% #Rs.3000 + 40% x 12 x 18 x 40% = 907200 x 40%	1,94,400 *	3,62,880 #
Permanent Disability	60,000	60,000
Loss of income during treatment **Rs.3,000 x 4 ## Rs.3000 x 12	12,000 **	36,000 ##
Transport charges	3,000	10,000
Extra nourishment	3,000	10,000
Damage to clothes and articles	1,000	1,000
Medical expenses	2,30,000	2,30,000
Pain and suffering	25,000	25,000
Future medical expenses	-	10,000
Total compensation	5,28,400	7,44,880

19. In the result, this appeal filed by the Appellant / claimant stands partly allowed by enhancing the compensation from 5,28,400 to Rs.7,44,880/- . No costs.

20. 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.3216 of 2009, on the file of the Motor Accidents Claims Tribunal, (II 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(CCC)

//True Copy//

Sub Assistant Registrar

vsi2

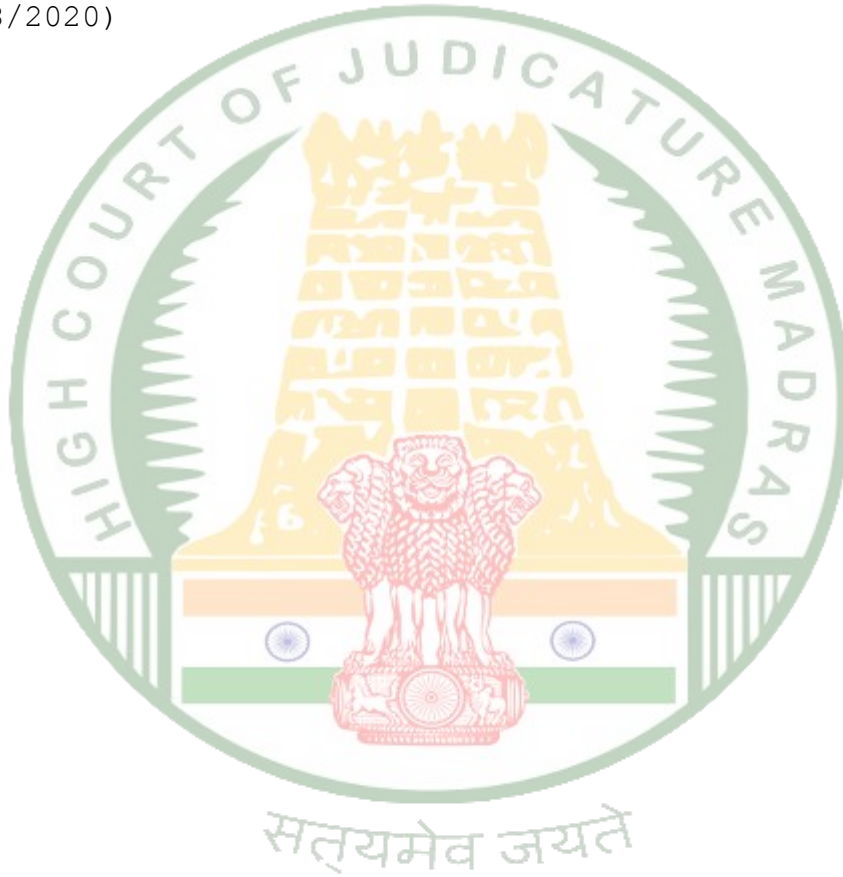
To

1.The II Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

C.M.A.No.3311 of 2012

A.SK(26/08/2020)



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