

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2912 of 2013

M.Maharajan

...Appellant/Petitioner

vs.

1. Parvathy Ortho Hospital,
No.241, G.S.T. Road,
Chrompet, Chennai - 44.
was set exparte in the Trial Court
Notice may be dispense with

2. The New India Assurance Company Limited,
No.45, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2013 made in MACT O.P. No.4472 of 2012 on the file of the V Judge, Small Causes Court (Motor Accidents Claims Tribunal) at Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : Mr.R. Neethi Perumal for R2
R1 - Ex-parte

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the appellant / claimant seeking enhancement of compensation under the impugned award dated 03.04.2013 passed by the Motor Accidents Claims Tribunal (V Judge, Small Causes Court) at Chennai in M.C.O.P.No.4472 of 2012.

2. The appellant /claimant sustained injuries on 04.09.2012 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 Accidents Claims Tribunal, (V Judge, Small Causes Court) at Chennai for the injuries sustained by him.

3. The Motor Accidents Claims Tribunal (V Judge, Small Causes Court) at Chennai, under the impugned award directed the respondents to pay the appellant / claimant a compensation of Rs.2,41,000/- together with interests and costs, as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earning	40000
Transport to Hospital	10000
Extra nourishment	10000
Damage to clothes	1000
Medical expenses	40000
Attender charges	6000
Pain and suffering	35000
Disability of 55% at Rs.1,800/- per percentage	99000
Total	2,41,000

4. The appellant /claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking for enhancement.

5. Heard Mr.K.Varadha Kamaraj, learned counsel for the appellant, Mr.R. Neethiperumal, learned counsel for the second respondent. The first respondent remained ex-parte before the Tribunal, hence notice to the first respondent is dispensed with.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellant / claimant has filed documents which were marked as Exhibits and he was examined as a witness (PW1) and the Doctor, who examined him as PW3. On the side of the respondents neither any document was filed nor any witness was examined before the Tribunal.

8. The appellant / claimant was aged 45 years and he was doing business and in the claim petition, he has pleaded that he was earning Rs.15,000/-p.m. However, no documentary evidence was produced by the appellant / claimant in support of his claim that he was earning Rs.15,000/-. Since the appellant / claimant did not file any documentary evidence before the Tribunal to establish his claim that he was earning Rs.15,000/-p.m., the Tribunal has awarded a sum of Rs.40,000/- towards loss of earning to the appellant / claimant on a notional basis. This Court is in agreement with the said assessment as even before this Court, the appellant / claimant has not produced any documentary evidence in support of his claim that he was earning Rs.15,000/-p.m.

9. The appellant / claimant has sustained the following injuries:

Heady injury, anterior intra hemispheric SAH, fracture of both bone right leg distal (3rd) and was treated as inpatient from 04.09.2012 to 10.09.2012 and undergone surgery thereby IL nailing right tibia was done.

10. The Doctor, who assessed him was also examined as a witness before the Tribunal as PW3. He has assessed the disability of the appellant / claimant under two heads. As regards the fracture in the leg, the Doctor has assessed the disability at 40% and as regards the head injury, the Doctor has assessed the disability at 15%. In all put together, the Doctor has assessed the disability at 55%. The Tribunal has awarded disability compensation of Rs.99,000/- to the appellant / claimant calculated at Rs.1,800/- per percentage of disability. The accident happened in the year 2012. The Tribunal ought to have considered the year of the accident before assessing the disability compensation. After giving due consideration to the year of the accident which happened in the year 2012, this Court enhances the disability compensation from Rs.99,000/- to Rs.1,65,000/-, calculated at Rs.3,000/- per percentage of disability instead of Rs.1,800/- per percentage of disability fixed by the Tribunal.

11. The Tribunal has failed to award any compensation towards loss of amenities which the appellant / claimant is legally entitled to in view of the injuries sustained by him as referred to supra. Accordingly, this Court awards Rs.10,000/- to the appellant / claimant towards loss of amenities.

12. Insofar as the compensation awarded by the Tribunal under various other heads viz., Transport, Extra nourishment, Damage to clothing, Medical expenses, Attender charges, Pain and suffering are concerned, the same is a just compensation and there is no scope for interference by this Court.

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 earning	40000	40000
Transport to Hospital	10000	10000
Extra nourishment	10000	10000
Damage to clothes	1000	1000
Medical expenses	40000	40000

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Attender charges	6000	6000
Pain and suffering	35000	35000
Disability of 55% at * Rs.1,800/- per percentage # Rs.3,000/- per percentage	99000 *	1,65,000 #
Loss of amenities	-	10,000
Total	2,41,000	3,17,000

14. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.2,41,000/- to Rs.3,17,000/- as indicated above. No costs.

15. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed 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.4472 of 2012 on the file of the Motor Accidents Claims Tribunal (V Judge, Small Causes Court) at 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/claimant before receiving the copy of this Judgment.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

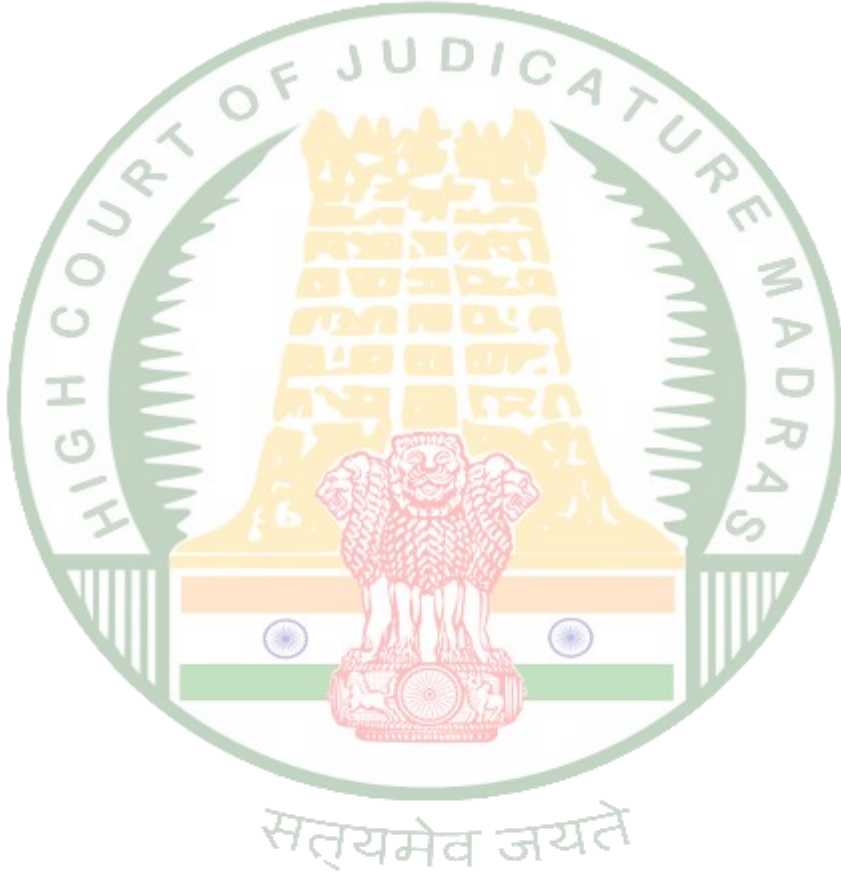
1.The V Judge,
Small Causes Court
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R. Section,
Madras High Court.

+1cc to Mr.Varada kamaraj, Advocate, S.R.No. 30842

C.M.A.No.2912 of 2013

MG (CO)
GN (06/11/2020)



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