

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3031 OF 2013

V.Karthick

... Appellant/Petitioner

..Vs..

1. M/s.Sakthi Motors

No.946, Poonamallee High Road
Flowers Road,
Chennai-84.

... R1/R1

2. Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, College Road
Chennai-600 034.

(1st respondent was exparte before
the Tribunal and notice may be dispensed
with.)

... R2/R2

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.3173 of 2006 dated 03.03.2011 by the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai and enhance the award amount in the interest of justice.

For Appellant : Mr.P.D.Selvaraj
For Respondents : Mr.N.Vijayaraghavan for R2
R1 - exparte

JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 03.03.2011 passed by the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai, in M.C.O.P No.3173 of 2006.

2. The Appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking enhancement.

3. As seen from the records, the second respondent Insurance Company had also preferred an appeal CMA No.2305 of 2014 aggrieved by the findings given by the Tribunal under the impugned award. However, the same was withdrawn before the Lok Adalat by the second respondent on 14.09.2019.

4. 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:

Heads	Award Amount (Rs.)
Loss of income for the period of treatment	12,000/- (3000 x 4)
Transportation	3,000/-
Extra nourishment	10,000/-
Attender Charges	3,000/-
Medical Expenses	2,268/-
Pain and Suffering	25,000/-
Disability of 40% at Rs.2000/- per percentage	80,000/-
Total	1,35,268/-
Rounded off to	Rs.1,35,270/-

6. Before the Tribunal, the Appellant/claimant has filed 15 documents which were marked as Ex.P1 to Ex.P15 and three witnesses were examined on his side namely, PW1 - the Appellant himself, PW2 - P.A.Adalarasu, ENT Surgeon and PW3- Dr.K.J.Mathiazahgan, Orthopedician. On the side of the respondents, two documents were filed which were marked as Ex.R1 and R2 and two witnesses were examined namely, RW1 and RW2.

7. The Appellant/claimant has sustained the following injuries namely, i) Fracture of Right Zygomatic Arch, ii) Fracture Petrous Temporal Bone Right, iii) Fracture Right side Condyle with comminution at timban's Scaral and other multiple injuries all over the bodies. as a result of the accident caused by a vehicle owned by the first respondent and insured with the second respondent.

8. Before the Tribunal, Orthopedician (PW3) K.J.Mathiazahgan has deposed that the Appellant/claimant has sustained 40% disability. While, ENT Doctor namely,

Dr.P.A.Adalarasu (PW2) has deposed that the Appellant/claimant has sustained 35% disability with regard to the Appellant/claimant's hearing loss in the right ear. However, as seen from the impugned award, the Tribunal has only taken into consideration the disability assessed by Dr.K.J.Mathiazahagan, Orthopedician (PW3), but has totally ignored the disability assessed by Dr.P.A.Adalarasu (PW2), insofar as the right ear of the Appellant/claimant is concerned. The Tribunal ought to have awarded separate disability compensation to the Appellant/claimant with regard to the disability suffered by him on account of the damage to his right ear which has resulted in hearing loss to him. Eventhough, the Doctor (PW3) has assessed the disability with regard to the right ear of the Appellant/claimant at 35%, this Court is of the considered view that the said assessment is on the higher side and it has to be reduced to 30%. Since no compensation has been awarded for the Appellant/claimant's right ear disability, this Court awards a sum of Rs.60,000/- as compensation towards the said head calculated at Rs.2000/-per percentage of the disability. It is the correct assessment for the accident which happened in the year 2005. The Appellant/claimant is a Mechanic at the time of accident. As seen from the deposition of PW2 and PW3 - Doctors, the Appellant/claimant had sustained hearing disability and fractures.

9. The Tribunal has awarded Rs.80,000/- as disability compensation towards the fracture sustained by the Appellant/claimant. But, however, as indicated earlier, the Tribunal has not awarded any compensation towards the hearing disability sustained by the Appellant/claimant as assessed by PW3, namely Dr.P.A.Adalarasu for which, this Court assesses the compensation as Rs.60,000/-.

10. The Tribunal under the impugned award has assessed the notional monthly income of the Appellant at Rs.3,000/- considering the year of the accident which happened in the year 2005. The said assessment is a correct assessment. However, the Tribunal has awarded only Rs.12,000/- as compensation to the Appellant/claimant towards loss of income for the period of his treatment which in the considered view of this Court is low. As seen from the injuries sustained by the Appellant/claimant, he would have been unable to do his regular work as Mechanic atleast for a period of five months. Therefore, this Court enhances the compensation towards loss of income for the period of treatment to Rs.15,000/- calculated at Rs.3000/- per month for a period of five months instead of four months.

11. The Tribunal has also awarded only a sum of Rs.3,000/- towards transportation and another sum of Rs.3,000/- towards attender charges which in the considered view of this Court is

not an adequate sum. The same will have to be enhanced to Rs.5,000/- and Rs.10,000/- respectively by this Court. Insofar as the medical expenses of Rs.2,268/- awarded by the Tribunal is concerned, the same is confirmed by this Court as the Tribunal has awarded only after scrutinizing the medical bills produced by the Appellant/claimant which was marked as Ex.P7 before the Tribunal.

12. Insofar as the compensation towards extra nourishment charges and pain and sufferings are concerned, the compensation awarded by the Tribunal as Rs.10,000/- and Rs.25,000/- respectively. The said assessment is correct assessment and there is no scope for interference by this Court.

13. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of amenities which the Appellant/claimant is legally entitled to. This Court assesses the compensation payable to the Appellant/claimant towards loss of amenities as Rs.20,000/-.

14. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,35,268/- to Rs.2,27,268/- in the following manner:

Heads	Amount awarded by the Tribunal	Award Amount (Rs.)
Loss of income	12,000/- (3000 x 4)	15,000/- (3000 x 5)
Transportation	3,000/-	5,000/-
Extra nourishment	10,000/-	10,000/-
Attender charges	3,000/-	10,000 /-
Medical expenses	2,268/-	2,268/-
Pain and Sufferings	25,000/-	25,000/-
Disability at 40%	80,000/-	80,000/-
Hearing disability	Nil	60,000/-
Loss of amenities	Nil	20,000/-
Total		2,27,268/-

Conclusion:

15. 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 award amount i.e 2,27,268/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.3173 of 2006 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 along with accrued interest as per the order of this Court to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

Copy To

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

C.M.A.No.3031 of 2013

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