

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3415 of 2013

Anandan

... Appellant /Petitioner

Versus

1. Mayakannan

2. The Branch Manager,
Oriental Insurance Co. Ltd.,
No.75, Krishnan Street,
Thiruvannamalai.

..... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2008 and made in M.A.C.T.O.P. No.957 of 2006 on the file of the Motor Accident Claims tribunal and Additional Sub Judge, Tiruvannamalai.

For Appellant : Mr.M.Malar

For Respondents : Mr.P.Kandasamy for R2
R1 - Exparte

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 16.09.2008 passed by the Motor Accidents Claims Tribunal (Sub Court), Tiruvannamalai in MCOP No.957 of 2006.

2. The appellant /claimant sustained injuries on 12.12.2005, as a result of an accident caused by an Auto bearing Registration No.TN-25-C-9794 owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accidents Claims Tribunal (Sub Court), Tiruvannamalai seeking a compensation of Rs.5,00,000/- for the injuries sustained by him, as a result of the said accident.

3. The Motor Accidents Claims Tribunal (Sub Court), Tiruvannamalai by its award dated 16.09.2008 passed in MCOP

No.957 of 2006 directed the second respondent / Insurance Company to pay the appellant / claimant a sum of Rs.37,000/- together with interests and costs.

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

Heads	Amount awarded by the Tribunal (Rs.)
Transport to Hospital	2,000
Extra nourishment	2,000
Pain and suffering	3,000
Partial disability	30,000
Total	37,000

5. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

6. Heard Mr.M.Malar, learned counsel for the appellant and Mr.P.Kandasamy, learned counsel for the second respondent / Insurance Company. The first respondent remained ex-parte both before the Tribunal and before this Court.

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

8. Before the Tribunal, the appellant / claimant has filed seven documents, which were marked as Exs.P1 to P7 and two witnesses were examined on his side viz., the appellant himself as PW1 and the Doctor who examined him as PW2. On the side of the respondent / Insurance Company, neither any document was filed nor any witness was examined.

9. The only question that needs to be considered by this Court is whether the appellant / claimant is entitled for enhancement of compensation or not.

10. The appellant / claimant has sustained fracture in the II, III toes of his right leg and he has also sustained grievous injuries over the right knee and right foot, as seen from the disability certificate (Ex.P6). No contra evidence has been produced by the second respondent before the Tribunal to disprove the nature of injuries sustained by the appellant / claimant. The Doctor (PW2), who examined the appellant / claimant had fixed the disability at 15%, as per Disability certificate (Ex.P6) and X-ray (Ex.P7). While assessing the compensation towards disability, the Tribunal has also taken the same percentage viz., 15%, as assessed by the Doctor(PW2). The accident happened in the year 2005,

Labour Contractor, as seen from his claim petition. Further, he had claimed that he was earning Rs.5,000/-p.m. Since, the appellant / claimant has not produced any documentary proof to show his income, the Tribunal has taken the monthly income of the appellant / claimant at Rs.2,000/- on notional basis, which is correct. and this Court is of the considered view that there is no scope for interference.

11. Even though under the impugned award, the Tribunal has given a clear finding that the appellant / claimant is entitled for compensation of Rs.2,000/- towards loss of income during the period of his treatment, while assessing the total compensation under the impugned award, the Tribunal by mistake has left out the said sum. Accordingly, a sum of Rs.2,000/- is awarded as compensation towards loss of income by this Court during the period of treatment.

12. The Tribunal ought to have awarded compensation towards loss of amenities after considering the nature of injuries sustained by the appellant / claimant but however the Tribunal has failed to do so, Accordingly, this Court after considering the nature of the injuries sustained by the appellant and the year of the accident awards a sum of Rs.3,000/- towards loss of amenities.

13. With regard to other heads of compensation, viz., Transportation, Extra nourishment, pain and suffering and partial disability are concerned, this Court does not find any infirmity in the same and it is confirmed.

14. 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.)
Transport to Hospital	2,000	2,000
Extra nourishment	2,000	2,000
Pain and suffering	3,000	3,000
Partial disability	30,000	30,000
Loss of income	-	2,000
Loss of amenities	-	3,000
Total	37,000	42,000

15. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.37,000/- to Rs.42,000/- as indicated above. No costs.

16. 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.957 of 2006, on the file of the Motor Accidents Claims Tribunal, (Additional Sub Judge), Thiruvanamalai, 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 (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsi2

To

- 1.The Additional Sub Judge,
Motor Accidents Claims Tribunal
Tiruvanamalai.
- 2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+1cc to Mr.M.Malar, Advocate, S.R.No.26317

C.M.A.No.3415 of 2013

PVS (CO)
GN(05/11/2020)

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