IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.06.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3736 of 2013 &
M.P.No.1 of 2013

M.Thangavel ... Appellant/Petitioner

vs.

1. G.Kuppan

2. Iffco Tokio General Insurance Co. Ltd.,
   Sahas Embassy, Ground Floor,
   145/31, Nelson Manickam Road, Methanagar,
   Chennai – 600 029.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.12.2012 made in MACTOP.No.1483 of 2011 on the file of the IV Judge, Before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V.Muthuvisagan

For Respondent 2 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

For Respondent 1 : No appearance

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 21.12.2012 passed by the Motor Accident Claims Tribunal (IInd Judge, Court of Small Causes, Chennai) in MCOP.No.1483 of 2011.

2. The Appellant/claimant being unsatisfied with the quantum of compensation awarded by the Tribunal has filed this Appeal.

3. The Appellant/claimant sustained injuries as a result of an accident which took place on 14.03.2011 caused by a vehicle insured with the second respondent. The adverse findings of negligence as against the driver of the insured vehicle given by the Tribunal has now become final, since no appeal has been filed by the second respondent insurance company challenging the said finding.

4. The only question that arises for consideration in this Appeal is whether the Appellant/claimant is entitled for enhancement of compensation.

5. Heard Mr.K.V.Muthuvisagan, learned counsel for the Appellant and Mr.E.Rajadurai learned counsel representing Mr.N.Vijayaraghavan learned counsel for the second respondent. Despite service of notice on the first respondent, there is no representation on his side.

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

Heads	Award Amount (Rs.)
Loss of income for three months at the rate of Rs.4,500/- p.m.	13,500/- (4500 x 3)
Transportation	10,000/-
Extra nourishment	10,000/-
Damages to cloth	1,000/-
Pain and Suffering	35,000/-
Disability at 50% at the rate of Rs.2,000/- per percentage	1,00,000/-
Total	1,69,500/-

7. The Appellant/claimant was aged 39 years and he was a mat seller at the time of the accident. He sustained both bone right leg fracture and was hospitalised between 14.03.11 and 04.04.2011 and from 24.07.2012 to 03.08.2012 totally for a period of 33 days.

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

Appellant/claimant himself as PW1 as well as the Doctor who examined him as PW2. On the side of the second respondent insurance company neither any witness was examined nor any document filed.

9. In the claim petition, the Appellant/claimant has pleaded that he was earning Rs.500/- per day. Eventhough the Appellant/claimant in his claim petition had pleaded that he was earning Rs.500/- per day, the Tribunal has assessed the notional monthly income of the Appellant/claimant only at Rs.4,500/-, since no documentary evidence was produced by the Appellant/claimant in support of his pleadings. The Tribunal has awarded a sum of Rs.13,500/- as loss of income to the Appellant/claimant during the period of treatment calculated for a period of three months. The nature of injuries as well as the period of hospitalisation as seen from the discharge summaries issued by the hospital namely Ex.P2 and Ex.P3 have not been disputed by the second respondent insurance company before the Tribunal. After giving due consideration to the long period of hospitalisation, this Court is of the considered view that the loss of income assessed by the Tribunal in favour of the first respondent/claimant only for a period of three months is too low and it has to be assessed for a period of six months. Further, the Tribunal ought to have considered the year of the accident as well as the nature of the avocation of the Appellant/claimant before assessing his monthly income. No contra evidence has been produced by the second respondent insurance company to disprove the avocation of the Appellant/claimant. While that be so, the assessment of the notional monthly income of the Appellant/claimant by the Tribunal at Rs.4,500/- is too low in the considered view of this Court and it has to be enhanced to Rs.6,500/-. As observed earlier, the loss of income for the Appellant/claimant has to be assessed for a period of six months and not for a period of three months as assessed by the Tribunal under the impugned award. Accordingly, the loss of income for a period of six months to the Appellant/claimant is assessed at Rs.39,000/- calculated at Rs.6,500/- per month instead of Rs.13,500/- calculated at Rs.4,500/- for a period of three months by the Tribunal.

10. Insofar as the quantum of compensation awarded by the Tribunal under the heads transportation, extra nourishment, damages to clothing and pain and suffering at Rs.10,000/-, Rs.10,000/-, Rs.1,000/- and Rs.35,000/- respectively, the same is confirmed by this Court, since the said compensation is a just compensation.

11. The Doctor assessed the disability of the Appellant/claimant at 50% and the Tribunal under the impugned award has awarded Rs.1,00,000/- as disability compensation

calculated at Rs.2,000/- per percentage of disability. This Court after giving due consideration to the year of the accident which happened in the year 2011, is of the considered view that the said assessment is not a correct assessment and the disability compensation will have to be enhanced from Rs.1,00,000/- to Rs.1,50,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability by the Tribunal.

12. The Tribunal has also not awarded any compensation towards loss of amenities and attender charges which he is legally entitled to as per the settled position of law. This Court after giving due consideration to the nature of injuries sustained by the Appellant/claimant awards Rs.20,000/- as compensation towards loss of amenities and Rs.15,000/- towards attender charges.

13. 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.)	Modified Award Amount (Rs.)
Loss of income	13,500/- (4,500 x 3)	39,000/- (6,500 x 6)
Transportation	10,000/-	10,000/-
Extra nourishment	10,000/-	10,000/-
Damages to cloth	1,000/-	1,000/-
Pain and suffering	35,000/-	35,000/-
Disability	1,00,000/-	1,50,000/-
Attender charges	---	15,000/-
Loss of amenities	---	20,000/-
Total	1,69,500/-	2,80,000/-

Conclusion:

14. 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, Rs.2,80,000/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1483 of 2011 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 Appellant/claimant through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   (Court of small causes) IV Judge,
   Chennai.

2. The Section Officer,
   VR Section, High Court,
   Chennai.

C.M.A.No.3736 of 2013

PA(CO)
RLP(05/08/2021)