



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3782 of 2013

V.Vadivel

... Appellant/Petitioner

Versus

1. J. Gourishankar

2. M.Raja Raja Cholan

3. The Branch Manager,
The New India Assurance Company Ltd.,
Branch Office
34, Alagar Kovil Road,
Talakulam,
Madurai - 625 002.

...Respondents/Respondents

(Respondents 1 & 2 are not necessary
party in the above appeal. Hence dispense
with issuing notice to the respondents 1 & 2)

Pzrayer : Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and award dated
03.12.2012 made in MCOP No.158 of 2010 passed by the Motor
Accident Claims Tribunal (II Additional District Judge), Erode.

For Appellant : Ms.Revathy

For Respondents : R1 and R2 - Given up
Mr.R.Sivakumar for R3

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
03.12.2012 passed by the Motor Accidents Claims Tribunal (II
Additional District Judge), Erode, in MCOP No.158 of 2010.



2. The appellant / claimant sustained injuries on 28.12.2009 as a result of an accident caused by a vehicle owned by the second respondent and insured with the third respondent. He preferred a claim before the Motor Accidents Claims Tribunal (II Additional District Judge, Erode) in MCOP No.158 of 2010 seeking compensation for the injuries sustained by him.

3. The Motor Accidents Claims Tribunal (II Additional District Judge), Erode by its award dated 03.12.2012 directed the third respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.2,78,400/- together with interests and costs.

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

Heads	Amount awarded by the Tribunal (Rs.)
Transportation	3,000/-
Nutrition	10,000/-
Medical expenses	1,33,000/-
Pain and sufferings	40,000/-
Permanent disability @ 35%	92,400/-
Total	2,78,400/-

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

6. Heard Ms. Revathy, learned counsel for the appellant and Mr.R.Sivakumar, learned counsel for the third respondent / Insurance Company. The first and second respondents have remained ex-parte both before the Tribunal as well as before this Court.

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

8. The primary ground raised in this appeal by the claimant is that the notional income fixed by the Tribunal at Rs.2,000/- is too low and it has to be enhanced. According to the appellant / claimant, he had taken medical treatment on the head, his temporal region skull bone was removed and plastered with soft skin. Under such circumstances, it is the claim of the appellant that he has to give utmost care to his head for the whole period of his life. Further according to the



appellant for maintaining his skin over the brain in a proper manner, he has to take continuous treatment and therefore, he has to incur future medical expenses. Further according to the appellant, he had taken treatment in two hospitals for a long period and underwent four surgeries. According to the appellant, the Tribunal has not taken note of all these factors while assessing the compensation and therefore, the compensation assessed by the Tribunal is not a just compensation.

9. Before the Tribunal, the appellant / claimant has filed seventeen documents, which were marked as Exs.P1 to P17 and three witnesses were examined on his side viz., the appellant / claimant himself as PW1 and the two Specialist Doctors, who examined him as PW2 and PW3 respectively. On the side of the respondents neither any document was filed nor any witness was examined before the Tribunal.

10. The Ortho Doctor for bone and joint, has assessed the disability of the appellant / claimant at 10% and for head injuries the Doctor has assessed at 25%. The Tribunal has therefore taken 35% as the disability suffered by the appellant / claimant. The Tribunal has rightly adopted the multiplier method in view of the grievous injuries sustained by the appellant / claimant as indicated above. However, the only question that arises for consideration is whether the notional monthly income fixed by the Tribunal is correct or not.

11. The appellant / claimant was a Tailor and doing real estate business, at the time of the accident as seen from the claim petition filed before the Tribunal. The accident happened in the year 2009. No contra evidence has been produced by the respondents to disprove the contention of the appellant / claimant that he was a Tailor and doing real estate business. While that being so, this Court is of the considered view that the notional monthly income of the appellant / claimant fixed by the Tribunal at Rs.2,000/- is too low and it has to be necessarily enhanced.

12. This Court after giving due consideration to the evidence available on record and after giving due consideration to the year of the accident as well as the year of the claim petition, which was filed in the year 2010, whereas, the accident happened on 28.12.2009 fixes the notional monthly income of the appellant / claimant at Rs.5,000/-. The multiplier adopted by the Tribunal for assessing loss of income to the appellant / claimant is also correct, since the appellant / claimant was aged 53 years at the time of the accident. Since the notional monthly income of the appellant / claimant is enhanced to Rs.5,000/- by this Court from Rs.2,000/- fixed by the Tribunal, the compensation towards loss of income is



enhanced from Rs.92,400/- to Rs.2,31,000/-.

13. The Tribunal under the impugned award failed to award any compensation towards attender charges and loss of amenities to the appellant /claimant, which he is legally entitled to, in accordance with the settled practice. This Court awards Rs.15,000/- each to the appellant / claimant towards loss of amenities and loss of attender charges. Further, the compensation awarded by the Tribunal towards Transportation costs at Rs.3,000/- is low and it has to be necessarily enhanced in view of the fact that the appellant / claimant has underwent four surgeries and was hospitalised for a long period of time. This Court deems it fit to enhance the same to Rs.10,000/- instead of Rs.3,000/- fixed by the Tribunal.

14. However, the compensation under other heads viz., extra nourishment for Rs.10,000/-, Reimbursement of medical expenses for Rs.1,33,000/- and Rs.40,000/- towards Pain and suffering is a just compensation and there is no scope for interference by this Court. The appellant / claimant is not entitled for any future medical expenses, since no documentary evidence has been produced by him in support of the same.

15. 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.)
Transportation	3,000/-	5,000/-
Nutrition	10,000/-	10,000/-
Medical expenses	1,33,000/-	1,33,000/-
Pain and suffering	40,000/-	40,000/-
Permanent disability @ 35% * Rs.2,000/- # Rs.5,000/-	92,400/- *	2,31,000/- #
Attender charges	-	15,000/-
Loss of amenities	-	15,000/-
Total	2,78,400/-	4,49,000/-

16. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.2,78,400/- to Rs.4,49,000/- as indicated above. No costs.

17. The third 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.158 of 2001, on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Erode, 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.

18. It is made clear that the appellant is not entitled for any interest for the period of delay, if any, in preferring this appeal.

Sd/-
Asst.Registrar (CS IX)

/true copy/
Sub Asst. Registrar

vsi2
To
1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Erode.

Copy to:

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

+1 cc to Mr.R.Sivakumar Advocate sr30148

C.M.A.No.3782 of 2013

br(co)
aa05/02/2021