

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.12.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.575 of 2013

R.Pushparaj

... Appellant/Petitioner

vs.

1.Meera Siva Sankaran, W/o.Sivasankaran
2.The Oriental Insurance Company Limited,
Division Office No.7,
272, Annasalai,
Chennai - 600 018.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 15.09.2009 made in MACTOP.No.2474 of 2005 on the file of the Motor Accident Claims Tribunal/III Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondent 2 : Mr.K.Vinod

Not ready in notice reg. R1.

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 15.09.2009 passed by the Motor Accident Claims Tribunal (III Court of Small Causes, Chennai,) in MCOP.No.2474 of 2005.

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

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

Heads	Award Amount (Rs.)
Loss of earnings	15,000/-
Transport expenses	2,000/-
Extra Nourishment charges	1,000/-
Damage to Dress and articles	1,000/-
Medical Expenses	2,000/-
Pain and Suffering	10,000/-
Permanent Disability	60,000/- (60 x 1000)
Attender charges	2,000/-
Total	93,000/-

4. Before the Tribunal, the Appellant/claimant has filed six documents which were marked as Ex.P1 to Ex.P6 and two witnesses were examined on his side namely the Appellant/claimant himself as PW1 and 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.

5. The Appellant/claimant sustained severe injury in hip and communitated fracture of Left Olial Wing, Vertical fracture along the medial aspect of the Left ilium, fracture of left Acetabular Ring with inward movement of head of fumer, fracture of superior ramus of right pubic and communitated fracture of lower end of tibia, oblique fracture of left tibula with Cortical separation and also sustained injuries all over the body, due to the accident caused by a vehicle on 09.11.2003 owned by the first respondent and insured with the second respondent.

6. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.2474 of 2005 seeking compensation for the injuries sustained by him.

7. The Motor Accident Claims Tribunal under the impugned award has directed the second respondent to pay the Appellant/claimant a sum of Rs.93,000/- as compensation together with interest and cost.

8. Aggrieved by the quantum of compensation awarded by the Tribunal, this Appeal has been filed by the Appellant/claimant.

9. Before the Tribunal, the nature of injuries and the avocation of the Appellant/claimant has not been disputed by the second respondent insurance company. The respondents have also not let in any documentary and oral evidence to rebut the contention of the Appellant/claimant. As indicated earlier, the nature of injuries sustained by the Appellant/claimant are grievous injuries. As a mason, he would have been unable to do his regular work for a long period of time. The Tribunal under the impugned award has awarded a compensation of Rs.15,000/- to the Appellant/claimant towards loss of income during the period of his treatment which in the considered view of this court is low. Since the Appellant/claimant has sustained grievous injuries as indicated earlier in this judgment and in view of the fact that the Appellant/claimant was a mason at the time of the accident, the Tribunal ought to have granted a higher compensation towards loss of income to the Appellant/claimant during the period of his treatment. In the considered view of this Court, a sum of Rs.50,000/- will be an adequate compensation towards the said head calculated for a period of ten months at Rs.5,000/- per month. Accordingly, the compensation towards loss of income during the period of treatment is enhanced from Rs.15,000/- to Rs.50,000/- by this Court.

10. The nature of injuries sustained by the Appellant/claimant is grievous in nature and as a mason, the injuries would certainly have impacted him from doing his regular work for a long period of time. Since sufficient evidence was not placed by the Appellant/claimant before the Tribunal, the Tribunal has rightly adopted the percentage basis for the purpose of assessing the disability compensation. The Doctor who was examined as PW2 has assessed the disability of the Appellant/claimant at 60%, as seen from the disability certificate, Ex.P6. But however, the Tribunal has awarded only Rs.60,000/- as disability compensation to the Appellant/claimant calculated at Rs.1,000/- per percentage of disability. Considering the year of the accident and the nature of injuries sustained by the Appellant/claimant which has also not been disputed by the respondent, the disability compensation awarded to the Appellant/claimant would have to be much higher. In the considered view of this Court, the disability compensation awarded at Rs.1,000/- per percentage of disability is low and it has to be necessarily enhanced by this Court. Accordingly, the disability compensation is enhanced to Rs.1,20,000/- calculated for 60% disability at the rate of Rs.2,000/- per percentage of disability.

11. Insofar as the compensation awarded by the Tribunal under the heads transportation, extra nourishment, pain and

suffering and attender charges at Rs.2,000/-, Rs.1,000/-, Rs.10,000/- and Rs.2,000/- respectively are concerned, the same will have to be necessarily enhanced as it is not an adequate sum, considering the nature of injuries sustained by the Appellant/claimant and avocation. Accordingly, the compensation awarded towards transportation, extra nourishment, pain and suffering and attender charges are enhanced to Rs.15,000/-, Rs.15,000/-, Rs.50,000/- and Rs.20,000/- respectively by this Court.

12. The Tribunal has also failed to award any compensation towards loss of amenities which the Appellant/claimant is legally entitled to in view of his avocation and the nature of injuries sustained by him. Accordingly, this Court awards a sum of Rs.25,000/- as compensation towards loss of amenities.

13. Insofar as the quantum of compensation awarded by the Tribunal towards damage to clothes at Rs.1,000/- and Rs.2,000/- towards medical expenses are concerned, the same is a just compensation and does not call for any interference by this Court.

14. 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 earning power	15,000/-	50,000/-
Transport expenses	2,000/-	15,000/-
Extra nourishment	1,000/-	15,000/-
Damage to clothes and articles	1,000/-	1,000/-
Pain and suffering	10,000/-	50,000/-
Medical Expenses	2,000/-	2,000/-
Permanent Disability	60,000/-	1,20,000/-
Attender charges	---	25,000/-
Loss of amenities	2,000	20,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Total	93,000/-	2,98,000/-

Conclusion:

15. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 9.5% is confirmed. The second respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.2,98,000/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.2474 of 2005 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 the accrued interest to the Appellant/claimant through RTGS within a period two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal/III Judge,
Court of Small Causes, Chennai.

Copy to

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

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mr[co]
srg 21/01/2021