

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.03.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2301 of 2014

Ramesh

... Appellant

vs.

1.C.Chandra

2. United India Insurance Company Ltd.,
Silingi Buildings,
No.134, Greams Road,
Chennai-6.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 10.10.2013 in MCOP.No.5786 of 2011 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai.

For Appellant : Mr.F.Terry Chellaraja

For 2nd Respondent : Mrs.Rathna Thara

1st Respondent : Served - No appearance

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of the compensation under the impugned award dated 10.10.2013 passed by the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai in MCOP.No.5786 of 2011.

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

3. The adverse finding given by the Tribunal against the driver of the insured vehicle has now become final, since no appeal has been filed by the second respondent/insurance

company. The only question that things to be decided is whether the appellant/claimant is entitled for enhancement of compensation or not.

4. The details of the award passed by the Motor Accident Claims Tribunal in favour of the appellant are as follows:

Sl.No.	Heads	Award (Rs.)
1	Loss of income	25,000/-
2	Pain and suffering	
3	Disability	
4	Transportation	
5	Extra nourishment	
	Total	25,000/-

5. Heard Mr.F.Terry Chellaraja, learned counsel for the Appellant/ claimant and Mrs.R.Rathna Thara, learned counsel for the Second Respondent/Insurance Company.

6. Before the Tribunal, the claimants have filed five documents, which were marked as Ex.P1 to Ex.P5 and two witnesses were examined viz., PW1 - the claimant/appellant himself and PW2- Doctor, who examined him. On the side of the respondents, neither any witness was examined nor any document filed.

7.The contention of the appellant in this appeal is that the Tribunal failed to consider the nature of injuries sustained by him while assessing the compensation. It is the case of the appellant that he sustained injuries like fracture of skull, nasal bone, dislocation in left wrist, contusion in left ankle, tenderness over left knee and abrasion in the left hip and multiple injuries all over the body, which is evidenced through Ex.P2 - OP Sheet, Ex.P4 - Disability Certificate as well as Ex.P5 - X-Ray Report.

8. According to the appellant/claimant, the Tribunal has not considered the disability certificate (Ex.P4), while assessing the compensation. It is his case that if the disability certificate, which discloses that he suffered 45% disability was considered, he would have been entitled for higher compensation.

9.The appellant/claimant was a Police Constable, aged at 31 years, earning a monthly income of Rs.15,454/- at the time of the accident. The Tribunal has accepted the statement of the appellant/claimant based on Ex.P3, identity card. The compensation awarded by the appellant towards loss of income,

pain and sufferings, transportation charges and towards extra nourishment at Rs.25,000/- has been awarded only based on the evidence available on record. However, the Tribunal ought to have considered the disability certificate (Ex.P4) properly, instead of totally rejecting the same on the ground that Dr.J.R.R.Thiyagarajan(PW2) has not treated the appellant/claimant. The Tribunal has awarded a partly sum of Rs.25,000/- to the appellant/claimant without any basis for arriving at the said figure. The total rejection of Ex.P4 (Disability Certificate) by the Tribunal is unwarranted. The nature of the injuries sustained by the appellant/claimant, has also not been disproved by the second respondent/insurance company by adducing any oral or documentary evidence. While this be so, the Tribunal ought to have granted some amount of compensation towards disability suffered by the appellant/claimant.

10.The Doctor (PW2) has assessed the disability at 45% but since no proper evidence is available on record excepting for the said disability certificate that the appellant/claimant had suffered 45% disability, the same cannot be accepted by this Court in toto. However, the Tribunal was also wrong in absolutely rejecting the disability certificate (Ex.P4) when there is evidence to show that the appellant/claimant had suffered injuries and that too, when no contra evidence has been produced by the second respondent/insurance company to disprove the contention of the appellant/claimant.

11.After giving due consideration to the nature of injuries sustained by the appellant/claimant and after taking note of Ex.P4 - Disability Certificate, this Court deems it fit to assess the disability to the appellant/claimant at 30% instead of 45% assessed by the Doctor (PW2). The year of the accident is 2010. Since, the Tribunal failed to award any compensation to the appellant/claimant towards his disability, this Court awards a sum of Rs.60,000/- as disability compensation, calculated at Rs.2,000/- per percentage of disability.

12.Excepting for this error of not granting the disability compensation, the compensation awarded by the Tribunal under various other heads including the loss of income, pain and suffering, transportation charges and extra nourishment are a just compensation and does not call for any interference.

13. For the foregoing reasons, the compensation awarded by the tribunal under the impugned award to the appellant is enhanced in the following manner:

Heads	Modified Award Amount (Rs.)
Loss of income (one month)	15,500/-
Pain and suffering	10,000/-
Disability	60,000/- (30%XR _s .2000)
Transportation charges	5,000/-
Extra nourishment	5,000/-
Total	95,500/-

Conclusion:

14. In the result, the 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.95,500/- along with interest and costs after deducting the amount, if any, already deposited, to the credit of MCOP.No.5786 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 share of the Appellant/claimant as per the order of this Court through RTGS within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
IV Court of Small Causes, Chennai.

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

+1cc to M/s.F.Terry Chellaraja, Advocate SR.No.25895

C.M.A.No.2301 of 2014

VSN II (CO)
GMY (07/09/2020)