

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.57 of 2020

Venugopal

...Appellant/Claimant

Versus

1. S. Kasinathan

2. Reliance General Insurance Company Ltd.,

Reliance House,

6th Floor,

Nungambakkam,

Chennai - 600 006.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 22.11.2019 in MCOP No.7658 of 2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Court - II), Chennai

For Appellant

: Mr.R. Nalliyappan

For Respondents

: Mr.S. Arunkumar for R2

R1 - Served - No appearance

JUDGMENT

(Heard video conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 22.11.2019 passed by the Motor Accident Claims Tribunal (Special Sub Court No.II), Court of Small Causes, Chennai in M.C.O.P.No.7658 of 2015.

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

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

Heads	Amount awarded by the Tribunal (Rs.)
Permanent disability	15000
Pain and sufferings	5000
Transportation	1000
Extra nourishment	10000
Damage to clothing	1000
Attendant charges	1000
Loss of amenities	5000
Mental agony to the family members of the petitioner	5000
Medical expenses	7960
Total	50960

4. Heard Mr.R. Nalliyappan, learned counsel for the appellant / claimant and Mr.S. Arun Kumar, learned counsel for the 2nd respondent / Insurance Company. Despite service of notice on the 1st respondent, there is no representation on his side.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The appellant / claimant sustained the following injuries as a result of an accident on 14.09.2015 caused by a vehicle owned by the first respondent and insured with the second respondent :

- a. Fracture over right leg
- b. Fracture over left leg
- c. Abrasion over left hand
- d. Multiple injuries all over the body

7. The Medical Board has assessed his disability at 5% and the disability certificate has been marked as Ex.C1. The Tribunal has awarded a disability compensation of Rs.15,000/-, calculated at Rs.3,000/- per percentage of disability for the 5% disability suffered by the appellant / claimant. This Court is of the considered view that the disability compensation awarded by the Tribunal at Rs.15,000/- is low as the year of the accident was not taken into consideration by the Tribunal. If the year of the accident which happened in the year 2015 was taken into consideration, the Tribunal ought to have fixed the

disability compensation calculated at Rs.4,000/- per percentage of disability and not at Rs.3,000/-. Accordingly, this Court re-assess the disability compensation at Rs.20,000/- calculated at Rs.4,000/- per percentage of disability instead of Rs.15,000/- erroneously fixed by the Tribunal.

8.The Tribunal has awarded a compensation of Rs.5,000/- towards pain and suffering which is low as the Tribunal has not taken into consideration that the appellant /claimant has sustained fracture. This Court therefore enhances the compensation towards pain and suffering from Rs.5,000/- fixed by the Tribunal to Rs.15,000/-.

9. The Tribunal has also awarded a meagre compensation of Rs.1,000/- towards transportation which has to be enhanced necessarily. This Court enhances the same to Rs.5,000/- after giving due consideration to the nature of the injuries sustained by the appellant / claimant.

10. With regard to the compensation awarded by the Tribunal under the heads extra nourishment, damage to clothing and loss of amenities are concerned, the same cannot be considered to be inadequate as alleged by the appellant / claimant as it is a just compensation and therefore, the same is confirmed.

11. However, the Tribunal has awarded a meagre compensation of Rs.1,000/- towards attender charges, which has to be necessarily enhanced. This Court enhances the same to Rs.5,000/- instead of Rs.1,000/- fixed by the Tribunal.

12. However, the Tribunal has erroneously awarded a compensation of Rs.5,000/- towards mental agony to the family members which is not in accordance with law. Since the appellant / claimant has already been awarded compensation towards pain and suffering, the question of payment of any compensation towards mental agony to the family members will not arise. Hence, the compensation awarded by the Tribunal towards mental agony at Rs.5,000/- is set aside by this Court.

13. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Permanent disability * Rs.3,000/- x 5% # Rs.4,000/- x 5%	15000 *	20000 #
Pain and suffering	5000	15000
Transportation	1000	5000
Extra nourishment	10000	10000
Damage to clothing	1000	1000
Attendant charges	1000	5000
Loss of amenities	5000	5000
Mental agony to the family members of the petitioner	5000	-
Medical expenses	7960	7960
Total	50960	68960

14. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.50,960/- to Rs.68,960/-, as indicated above. No costs.

15. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed 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 MCOP No.7658 of 2015 on the file of the Motor Accidents Claims Tribunal/ Special Court - II, Court of Small Causes, Chennai, 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. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Judge,
Motor Accidents Claims Tribunal
(Special Sub Court - II),
Court of Small Causes,
Chennai.

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

+1 CC to Mr.S. Arun Kumar, Advocate sr 48654.

C.M.A.No.57 of 2020

JPL(CO)
SP(14/03/2022)