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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA.NO.1044 OF 2015

D.Kumar

... Appellant/
Petitioner

Versus

1. Mohammed Faiyazudden

2. Reliance General Insurance Co. Ltd.
Rai's Tower,
Plot No.2054,
2nd Avenue, 2nd Floor,
(Next to Senthil Nursing Home)
Annanagar,
Chennai - 600 040.

... Respondents/
Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 21.02.2013 made in M.A.C.T.O.P. No.1052 of 2012 on the file of IV Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondents : Mr.S.Arunkumar for R2
R1 - Exparte

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.02.2013 passed by the Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai in M.A.C.T.O.P. No.1052 of 2012.

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 are as follows :



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Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss	
Loss of income for 2 months at the rate of Rs.4,500/- p.m.	9,000/-
Transportation	5,000/-
Extra nourishment	3,000/-
Medical expenses	1,330.50
Damages to clothes	1,000/-
Attender charges	2,000/-
Non pecuniary loss	
Pain and suffering	25,000/-
Disability at 45% at the rate of Rs.2,000/- per percentage	90,000/-
Total	1,36,330.50
Rounded off	1,36,400/-

4. Heard Mr.K.V.Muthuvisakan, learned counsel for the appellant/claimant and Mr.S.Arunkumar, learned counsel for the 2nd respondent/Insurance Company. The first respondent remained ex-parte both before the Tribunal and before this Court.

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

6. The appellant/claimant has sustained the following injuries on 05.02.2012 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent :

- Severe injury in the right leg;
- both bone fracture in right leg as well as skin loss and
- multiple injuries all over the body.

7. Before the Tribunal, the appellant / claimant has filed nine documents, which were marked as Ex.P1 to Ex.P9 and two witnesses were examined on his side viz, the appellant / claimant himself as PW1 and the Doctor, who examined him as PW2. However, on the side of the respondents, neither any witness was examined nor any document filed before the Tribunal.



8. The nature of injuries sustained by the appellant / claimant has not been disputed by the respondents before the Tribunal. The accident happened on 05.02.2012. The appellant / claimant was hospitalised for a period of six days, as seen from the discharge summary, which has been marked as Ex.P2 before the Tribunal. The Doctor (PW2), who assessed the disability of the appellant / claimant at 50%, whereas the Tribunal has reduced the disability to 45% after giving due consideration to the nature of injuries sustained by the appellant / claimant. This Court is of the considered view that the disability assessed by the Tribunal is a correct assessment. However, the Tribunal under the impugned award has not given due consideration to the year of the accident before assessing the compensation to the appellant / claimant towards his disability. The Tribunal has fixed the disability compensation calculated at Rs.2,000/- per percentage of disability for 45% disability assessed by the Tribunal. This Court is of the considered view that the accident happened on 05.02.2012 and after giving due consideration to the same, the disability compensation ought to have been fixed by the Tribunal at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability. Accordingly, the disability compensation awarded to the appellant / claimant is enhanced to Rs.1,35,000/-, calculated at Rs.3,000/- per percentage of disability for 45% disability suffered by the appellant / claimant

9. However, the Tribunal has awarded a compensation of Rs.9,000/- towards loss of earning to the appellant / claimant from 05.02.2012 to 04.08.2012, calculated at Rs.4,500/-p.m., for a period of two months. This Court is of the considered view that the Tribunal has not taken into consideration the nature of the injuries sustained by the appellant / claimant, which would have certainly prevented him from doing his regular work for atleast a period of four months. The Tribunal has calculated the loss of earning only for a period of two months and therefore, this Court is of the considered view that the appellant / claimant is entitled to loss of earning for a period of four months instead of two months as fixed by the Tribunal. Accordingly, the loss of earning for the appellant / claimant is enhanced from Rs.9,000/- to Rs.18,000/- calculated at Rs.4,500/- p.m., for a period of four months.

10. This Court is also of the considered view that the compensation awarded by the Tribunal to the appellant / claimant towards Transportation at Rs.5,000/- and Extra nourishment at Rs.3,000/- are also low and it has to be enhanced. Accordingly, the same is enhanced by this Court to Rs.10,000/- each.

11. Before the Tribunal, the appellant / claimant has filed medical bills for the cost of medicines purchased by him for his



treatment and the total medical bills was Rs.3,000/-, whereas the Tribunal has awarded only a compensation of Rs.1,330.50. Therefore, this Court enhances the compensation to the appellant / claimant towards cost of treatment and purchase of medicines from Rs.1,330.50, fixed by the Tribunal to Rs.3,000/-.

12. The Tribunal has also awarded a compensation of Rs.2,000/- towards attender charges which in the considered view of this Court is too low and it has to be necessarily enhanced and accordingly, this Court enhances the same to Rs.10,000/-.

13. The Tribunal has awarded a compensation of Rs.25,000/- towards pain and suffering. After giving due consideration to the nature of injuries sustained by the appellant / claimant, his period of hospitalisation, this Court enhances the compensation towards pain and suffering from Rs.25,000/- to Rs.30,000/-.

14. The Tribunal has erroneously failed to award any compensation towards loss of amenities which the appellant / claimant is entitled to in accordance with the settled law. Accordingly, this Court awards a compensation of Rs.10,000/- towards loss of amenities, after giving due consideration to the nature of injuries sustained by the appellant / claimant.

15. Insofar as the compensation awarded by the Tribunal towards Damage to dress materials is concerned, the same is confirmed by this Court as the compensation awarded by the Tribunal under the said head at Rs.1,000/- is a just compensation.

16. 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.)
Pecuniary loss		
Loss of income *for 2 months at the rate of Rs.4,500/- p.m. #for 4 months at the rate of Rs.4,500/-p.m.	9,000/- *	18,000/- #
Transportation	5,000/-	10,000/-
Extra nourishment	3,000/-	10,000/-
Medical expenses	1,330.50	3,000/-
Damages to clothes	1,000/-	1,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Attender charges	2,000/-	10,000/-
Non pecuniary loss		
Pain and suffering	25,000/-	30,000/-
Disability ** at 45% at the rate of Rs.2,000/- per percentage ## at 45% at the rate of Rs.3,000/- per percentage	90,000/- **	1,35,000/- ##
Loss of amenities	-	10,000/-
Total	1,36,330.50	2,27,000/-
Rounded off	1,36,400/-	

17. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,36,400/- to Rs.2,27,000/-, as indicated above. No costs.

18. 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 M.A.C.T.O.P. No.1052 of 2012 on the file of IV Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai, within a period of eight 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.

Sd/-
Deputy Registrar(AD II)

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Sub Assistant Registrar

vsi2



To

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

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.30319

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No.30015

CMA.No.1044 of 2015

MG(CO)
CS/29/10/2021