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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1345 of 2015

Jean Bap Tiste,
son of Mariassoucénadin

... Appellant

Vs

1.Kavitha

2.Royal Sundaram Alliance Insurance Company Limited, Chennai,
Represented by its Branch Manager,
No.46, Whites Road,
Chennai - 600 014.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Award dated 02.04.2012 in MACTOP.No.11 of 2011 on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal.

For Appellant

: Mr.L.Poovendra Perumal
for M/s. Bharatha Chakkravarthy

For Respondent 2

: Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

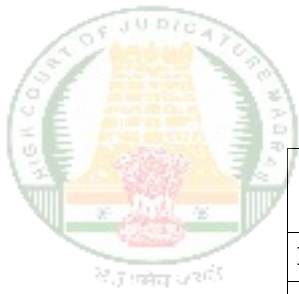
JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 02.04.2012 passed by the Motor accident Claims Tribunal (District Judge, Karaikal) in MCOP.No.11 of 2011.

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

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

Heads	Award Amount (Rs.)
For pain and suffering	25,000/-
For extra nourishment	5,000/-



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Heads	Award Amount (Rs.)
For permanent disability	35,000/-
For loss of income for two months	1,00,000/-
Total	1,65,000/-

4. The Appellant/claimant is a software engineer, earning Rs.50,000/- per month at the time of accident which happened on 24.12.2009 caused by a vehicle owned by the first respondent and insured with the second respondent Insurance Company.

5. The Appellant/claimant sustained both bone fracture in his left leg and was hospitalised for a period of two weeks between 24.12.2009 to 07.01.2010 as seen from the discharge summaries which have been marked as Ex.P6, Ex.P7 & Ex.P8 before the Tribunal. The nature of injuries sustained by the Appellant/claimant as well as the period of his hospitalisation have also not been disputed by the second respondent Insurance Company before the Tribunal. The Doctor PW2 who examined the Appellant/claimant has assessed the disability of the Appellant/claimant at 52%, but however, the Tribunal has reduced the same to 35% on the ground that the Doctor PW2 has himself admitted that he has not issued the disability certificate as per the guidelines issued by the Government of India. This Court is of the considered view that the reduction of the disability of the Appellant/claimant to 35% is too low, when compared to the assessment of the disability by the Doctor who has assessed the same at 52%. The nature of injuries sustained by the Appellant/claimant and his period of hospitalisation would enable him to be assessed at a disability which is higher. This Court after giving due consideration to the nature of injuries sustained by the Appellant/claimant and period of his hospitalisation is of the considered view that the disability of the Appellant/claimant will have to be assessed at 40% instead of 35% erroneously assessed by the Tribunal. Accordingly, this Court assesses the disability of the Appellant/claimant at 40%.

6. The Tribunal has awarded a disability compensation of Rs.35,000/- calculated at Rs.1,000/- per percentage of disability for the 35% disability which in the considered view of this Court is low and it has to be necessarily enhanced. The accident happened in the year 2009. If the year of the accident was taken into consideration, the Tribunal ought to have awarded a higher compensation. Since the disability of the Appellant/claimant is reassessed by this Court at 40%, this Court awards a compensation of Rs.1,20,000/- as disability compensation calculated at Rs.3,000/- per percentage of



7. The Tribunal has awarded a compensation of Rs.1,00,000/- towards loss of income to the Appellant/claimant during the period of his treatment, i.e., for the period of two months, the Tribunal has given a finding that the Appellant/claimant would have been unable to go for his regular employment. Admittedly, the Appellant/claimant was hospitalised for a period of two weeks. While that be so, naturally a person having suffered both bone fracture in his left leg, he would not have been able to go for his regular work atleast for a period of 2 ½ months. The monthly income of the Appellant/claimant was Rs.50,000/- at the time of the accident. The Tribunal has accepted the same and assessed the loss of income for a period of two months at Rs.1,00,000/-. Since this Court is of the considered view that at least for a period of 2½ months, the Appellant/claimant would have been unable to do his regular work, the loss of income has to be assessed for a period of 2½ months. Accordingly, the compensation awarded by the Tribunal to the Appellant/claimant towards loss of income during the period of his treatment i.e., for a period of 2 ½ months at Rs.1,25,000/- instead of Rs.1,00,000/- erroneously fixed by the Tribunal.

9. Insofar as the compensation awarded by the Tribunal towards pain and suffering at Rs.25,000/-, and towards extra nourishment at Rs.5,000/- are concerned, the same cannot be considered to be inadequate and the same is confirmed by this Court.

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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
For pain and suffering	25,000/-	25,000/-
For extra nourishment	5,000/-	5,000/-
For permanent disability	35,000/-	1,20,000/-
For loss of income for two months	1,00,000/-	1,25,000/-
Transportation	--	5,000/-
Attender charges	--	5,000/-
Loss of amenities	--	20,000/-
Total	1,65,000/-	3,05,000/-

11. In the result, this civil miscellaneous appeal is partly allowed by enhancing the compensation from Rs.1,65,000/- to Rs.3,05,000/-. The Second respondent Insurance company is directed to deposit the enhanced award amount, after deducting the amount already deposited if any together with interest from the date of claim till the date of deposit and cost to the credit of MCOP.No.11 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 shall transfer the amount lying to the credit of MCOP.No.11 of 2011 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
District Judge at Karaikal.



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

+1cc to Mr.T.Saikrishnan, Advocate SR.No.45591

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C.M.A.No.1345 of 2015

SVI (CO)
K.RK.(16.11.2021)