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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1455 of 2015

K.Balasubramanian

...Appellant/Petitioner

..Vs..

1.A.L.Lakshmanan

2.The Branch Manager

The New India Insurance Company Ltd.,

61, 2nd Floor, Rosari Buildings,

Town Hall Road,

Madurai - 625 001.

Madurai District.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 07.09.2010 made in MCOP.No.219 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.S.Kumaradevan

For R-2 : Mr.J.Chandran

R1 - Died

J U D G M E N T

(This Appeal has been taken up for hearing through Video Conferencing)

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 07.09.2010 passed by the Motor Accident Claims Tribunal, Subordinate Judge, Mayiladuthurai in MCOP.No.219 of 2008.

2. Heard Mr.S.Kumaradevan, learned counsel for the Appellant/claimant and Mr.J.Chandran, learned counsel for the second respondent/ Insurance Company.



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3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellant/claimant are as follows :

Heads	Award Amount (Rs.)
For 40% disability	60,000/-
Pain & Sufferings	10,000/-
Extra nourishment	5,000/-
Transport charges	1,000/-
Total	76,000/-

4. The appellant/claimant sustained the following injuries on 30.03.2006 as a result of the accident caused by the vehicle owned by the first respondent and insured with the second respondent/insurance company.

- (a) A cut injury in the right leg
- (b) Fracture in the left leg
- (c) Severe injury in the hip joint

5. The nature of the injuries sustained by the appellant / claimant has not been disputed by the respondents before the Tribunal. The appellant / claimant in his claim petition before the Tribunal has stated that he was running a medical shop at the time of accident and was earning Rs.8,000/- per month. The accident happened in the year 2006. The Tribunal has not assessed the notional monthly income of the appellant/claimant. This Court, after giving due consideration to the avocation and the year of accident, fixes the notional monthly income of the appellant/claimant at Rs.5,000/-.

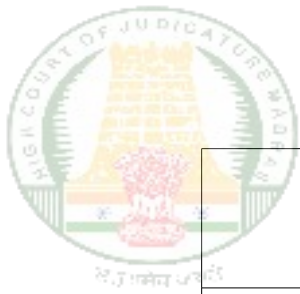
6. Before the Tribunal, the appellant/claimant filed six documents which were marked as Exs.P1 to P6 and two witnesses were examined on his side namely the appellant/claimant himself as PW1 and the doctor who examined him as PW2. Two witness exhibits were also marked as Exs.W1 & W2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal. The doctor who examined the appellant/claimant has assessed the disability at 40%. The appellant/claimant was hospitalized from 01.04.2006 to 12.04.2006 and thereafter from 15.05.2006 to 22.05.2006 which has also not been disputed by the respondents before the Tribunal.



7. The Tribunal has awarded a compensation of Rs.60,000/- towards disability calculating @ Rs.1500/- per percentage of disability, Rs.10,000/- towards Pain & Sufferings, Rs.5,000/- towards extra nourishment and Rs.1,000/- towards transport charges. In all, a total compensation of Rs.76,000/- was granted which in the considered view of this Court is low and it has to be enhanced. The appellant/claimant would have certainly been unable to go for his regular work due to the injuries sustained by him and also as a result of his hospitalization. The Tribunal has not awarded any compensation towards Attender charges which the appellant/claimant is legally entitled to, in view of the nature of injuries sustained by him and his period of hospitalization. The discharge summary issued by the hospital which has been marked as Ex.P4 before the Tribunal also reveals that a plate has been fixed on the left leg of the appellant/claimant on account of the fracture sustained by him.

8. This Court, after giving due consideration to the nature of injuries sustained by the appellant/claimant, is of the considered view that atleast for a period of four months from the date of the accident, he would have been unable to do his regular work. Hence, the loss of income to the appellant/claimant is calculated for a period of four months @ Rs.5,000/- per month which is the notional income fixed by this Court. Therefore, the compensation towards loss of income to the appellant/claimant is assessed at Rs.20,000/- calculated @ Rs.5000/- per month for a period of four months. After giving due consideration to the nature of injuries and the year of accident, this Court fixes the compensation towards Attender charges at Rs.5,000/-. Similarly, the Tribunal has also not awarded any compensation towards loss of amenities to the appellant/claimant which he is legally entitled to. This Court, fixes the compensation towards loss of amenities at Rs.5,000/-. This Court, also is of the considered view that the compensation awarded by the Tribunal towards Pain & Sufferings at Rs.10,000/- is low. It has to be enhanced, in view of the nature of injuries sustained by the appellant/claimant and his period of hospitalization. Accordingly, the same is enhanced to Rs.15,000/- from Rs.10,000/-. The compensation awarded by the Tribunal under other heads are confirmed.

9. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.76,000/- to Rs.1,11,000/- by this Court, in the following manner:



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
For 40% disability	60,000/-	60,000/-
Pain & Sufferings	10,000/-	15,000/-
Extra nourishment	5,000/-	5,000/-
Transport charges	1,000/-	1,000/-
Loss of income	-	20,000/-
Attender charges	-	5,000/-
Loss of amenities	-	5,000/-
Total	76,000/--	1,11,000/-

Conclusion:

10. In the result, this appeal shall stand partly allowed. The Second Respondent Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.1,11,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, excluding 1568 days, the period of delay in filing the appeal, as per the order of this Court made in M.P.No1 of 2015 in CMA SR No.26152 of 2015, after deducting the amount already deposited to the credit of MCOP.No.219 of 2008 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 to the bank account of the Appellant / claimant through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellant before receiving the copy of this Judgment. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Mayiladuthurai.



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

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+1 CC to Mr.S.Kumaradevan, Advocate sr 30136.

C.M.A.No.1455 of 2015

SMI (CO)
SP (26/11/2021)