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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1077 of 2016

S.Jayaraman (died)

2.J.Kaliyammal

3.J.Selvaraj

4.J.Tamilselvi

... Appellants / Petitioner

(Appellants 2 to 4 brought on record as LRS of the deceased sole Appellant vide order of this Court dated 29.06.2021 made in CMP.Nos.8579 to 8581 of 2021)

Vs

1.Saran Raj

2.M.Sathyaraj

3.The United India Insurance Company Limited,
Post Box No.34.C.G.Complex,
No.139-Kumaran Road,
Tirupur - 641 601.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 06.11.2015 in MCOP.No.1502 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate at Tirupur.

For Appellants : Mr.K.Myilsamy

For respondents 3: Ms.I.Malar

R2 : Notice Served

R3 : Not Ready



JUDGMENT

This appeal was originally filed by the claimant/first Appellant seeking enhancement of compensation under the impugned award dated 06.11.2015 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Tirupur) in MCOP.No.1502 of 2013. During the pendency of this appeal, the Appellant/claimant died and his legal representatives were brought on record as Appellants 2 to 4 by this Court.

2. The Tribunal under the impugned award directed the third respondent Insurance Company to pay the first Appellant/claimant a compensation of Rs.1,76,030/- for the injuries sustained by him on 15.09.2013 as a result of an accident caused by a vehicle owned by the second respondent and insured with the third respondent. The details of the compensation awarded by the Tribunal are as follows:

Heads	Award Amount (Rs.)
Medical expenses	32,030/-
Transportation, Extra nourishment & attender charges	15,000/-
Loss of income	24,000/-
Disability	90,000/- (45 x 2000)
Pain and suffering & loss of amenities	15,000/-
Total	1,76,030/-

3. The deceased claimant S.Jayaraman sustained head injury, fracture in neck and femur, fracture in calcaneum, fracture at left hip and multiple grievous injuries all over the body as a result of the aforementioned accident. The nature of injuries sustained by the claimant has not been disputed by the respondents before the Tribunal. The Doctor has assessed the disability of the claimant at 45% and the Tribunal has also accepted the said assessment made by the Doctor. However, the Tribunal has awarded the disability compensation of Rs.90,000/- calculated at Rs.2,000/- per percentage of disability for the 45%



disability. This Court is of the considered view that if the Tribunal had taken into consideration the year of the accident which happened in the year 2013, it ought to have fixed the disability compensation at a higher sum calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability. Therefore, this court enhances the disability compensation for the claimant to Rs.1,35,000/- calculated at Rs.3,000/- per percentage of disability for the 45% disability suffered by the claimant instead of Rs.90,000/- erroneously fixed by the Tribunal.

4. The Tribunal has awarded a compensation of Rs.15,000/- towards transportation, extra nourishment and attender charges which in the considered view of this Court is not a correct assessment as the injuries sustained by the claimant is grievous in nature and hence, this court confirms the said compensation of Rs.15,000/- only in respect of transportation and extra nourishment and separately awards a compensation of Rs.10,000/- towards attender charges.

5. In the claim petition, the claimant had claimed that he was a welder, aged 48 years and earning Rs.10,000/- per month at the time of the accident. However, the Tribunal has fixed the notional monthly income of the claimant at Rs.6,000/-. This Court after giving due consideration to the avocation of the claimant as well as the year of the accident which happened in the year 2013, is of the considered view that the notional monthly income of the claimant fixed by the Tribunal at Rs.6,000/- is low and it has to be enhanced to Rs.9,000/-. Accordingly, this court enhances the notional monthly income of the claimant to Rs.9,000/-. However, the assessment of loss of income for the period of four months by the Tribunal is a correct assessment. Since the notional monthly income of the claimant is enhanced to Rs.9,000/-, the loss of income to the claimant is enhanced to Rs.36,000/- calculated at Rs.9,000/- per month for a period of four months instead of Rs.24,000/- calculated at Rs.6,000/- per month for a period of four months erroneously fixed by the Tribunal.

6. The Tribunal has also awarded Rs.15,000/- towards pain and suffering and loss of amenities which in the considered view of this court is low and it has to be enhanced. After giving due consideration to the nature of injuries sustained by the claimant



as well as the period of hospitalisation which was for seven days, this Court enhances the compensation towards pain and suffering and loss of amenities to Rs.20,000/- instead of Rs.15,000/- erroneously assessed by the Tribunal.

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7. The Tribunal has awarded a compensation of Rs.32,030/- towards medical expenses which is supported by the medical bills produced by the claimant and marked as Ex.A4 before the Tribunal. Accordingly, the same is confirmed by this court.

8. The Tribunal has granted pay and recovery rights to the third respondent Insurance company as the driver of the insured vehicle did not possess a driving licence and the insured vehicle did not have effective insurance policy at the time of the accident. This Court does not find any infirmity in the findings given by the Tribunal and confirms the pay and recovery rights granted to the third respondent Insurance company.

9. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.2,48,030/- from Rs.1,76,030/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Medical expenses	32,030/-	32,030/-
Transportation, Extra nourishment	15,000/-	15,000/-
Attender charges		10,000/-
Loss of income	24,000/-	36,000/-
Disability	90,000/- (45 x 2000)	1,35,000/- (45 x 3000)
Pain and suffering & loss of amenities	15,000/-	20,000/-
Total	1,76,030/-	2,48,030/-

10. In the result, this civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.1,76,030/- to Rs.2,48,030/-. The third respondent Insurance Company is



directed to deposit the amount awarded by this Court, after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit to the credit of MCOP.No1502 of 2013 and costs within a period of four weeks from the date of receipt of a copy of this judgment and recover the same from the owner of the vehicle/second respondent. On such deposit being made, the Tribunal shall transfer the respective share of award amount lying to the credit of MCOP.No.1502 of 2013 to the bank account of the Appellants 2 to 4 through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate at Tirupur

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

+1cc to M/s.T.Ravichandran, Advocate, S.R.No.51102

C.M.A.No.1077 of 2016

SR-II(CO)
SB(29/10/2021)