IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1221 of 2016

K.Thanikachalam ... Appellant

Vs

1.M.Mohan
2.The New India Assurance Company Limited,
No.45, Moore Street,
Chennai – 600 001. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 30.10.2009 and made in MACTOP.No.3783 of 2006 on the file of the Motor Accident Claims Tribunal (II court of Small Causes, Chennai).

For Appellant : Mr.F.Terry Chella Raja
For Respondent 1 : Exparte

For Respondent 2 : Mr.M.Krishnamoorthy

JUDGMENT
(Heard through video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 30.10.2009 passed by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) in MCOP.No.3783 of 2006.

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

3. The Tribunal under the impugned award has assessed the compensation payable to the Appellant /claimant at Rs.5,13,000/- as detailed hereunder:

Heads	Assessed award amount (Rs.)
Loss of earning capacity	3,84,000/- (3000 x 12 = 36000 -1/3 = 24000 x 16)
Pain and suffering	26,000/-
Loss of amenities	10,000/-
Loss of expectation of life	10,000/-
Loss of earnings	15,000/-
Transportation	2,000/-
Extra nourishment	2,000/-
Damages	1,000/-
Other expenses	1,000/-
Disability	60,000/-
Medical expenses	2,000/-
Total	5,13,000/-

4. Since the Appellant/claimant has claimed only Rs.2,00,000/- in his claim petition, the Tribunal has reduced the compensation payable to the Appellant/claimant at Rs.2,00,000/- and directed the second respondent insurance company to pay the Appellant / claimant a compensation of Rs.2,00,000/- together with interest at the rate of 9.5% per annum from the date of claim till the date of realisation and recover the same from the first respondent, the owner of the vehicle.

5. The Appellant/claimant has sustained fracture of right ankle bone, fracture of right fibula and three other simple injuries as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The Doctor has assessed the partial permanent disability of the Appellant/claimant as seen from the disability certificate (Ex.P6) at 65%. The Appellant/claimant was hospitalised due to the injuries sustained by him as a result of the accident on two occasions namely (a) from 24.12.2005 to 26.12.2005 and from 26.12.2005 to 04.01.2006. The nature of injuries sustained by the Appellant/claimant and the period of hospitalisation has also not been disputed by the respondents as seen from the evidence available on record. The discharge summaries issued by the respective hospitals have also been marked as Ex.P2 &Ex.P3 before the Tribunal. After giving due consideration to the

nature of injuries sustained by the Appellant/claimant as well as the period of hospitalisation, this court is of the considered view that the disability assessed by the Tribunal at 60% is a correct assessment.

6. The Tribunal has awarded Rs.3,84,000/- as compensation towards loss of earning capacity to the Appellant/claimant. The Appellant/claimant has claimed that he was a Wholesale Rice Merchant and earning Rs.20,000/- per month. Since no documentary evidence was produced by the Appellant/claimant to prove that he was earning Rs.20,000/- per month at the time of the accident, the Tribunal has fixed the notional monthly income of the Appellant/claimant at Rs.3,000/- which in the considered view of this court is a correct assessment and the same is confirmed by this Court. The Appellant/claimant was aged 40 years at the time of the accident which has also not been disputed by the respondents. For a person aged 40 years, the Tribunal ought to have adopted 15 multiplier but erroneously has adopted 16 multiplier under the impugned award. Since it is an injury claim, the Tribunal ought not to have deducted 1/3rd towards personal expenses of the Appellant/claimant. There cannot be any deduction for an injury claim, hence, the same is modified by this Court by not deducting any amount towards personal expenses of the Appellant/claimant. Hence the loss of earning capacity to the Appellant/claimant is reassessed by this Court at Rs.3,24,000/- (3000 x 12 x 15 x 60%) instead of Rs.3,84,000/- erroneously fixed by the Tribunal.

7. The Tribunal has also committed error by separately awarding compensation towards partial permanent disability at Rs.60,000/- which will amount to duplication as the Tribunal has already awarded compensation towards loss of earning capacity by adopting multiplier method. Hence, the compensation towards partial permanent disability at Rs.60,000/- awarded by the Tribunal is set aside by this Court.

8. With regard to the compensation assessed by the Tribunal under various other heads namely loss of income, pain and suffering, extra nourishment, transportation, medical expenses, damages, other expenses, loss of amenities and loss of expectation of life are concerned, they cannot be considered to be inadequate as alleged by the Appellant/claimant and therefore, the same is confirmed by this Court.

9. The Tribunal under the impugned award has erroneously awarded interest at 9.5% per annum. As per the settled practice, the Tribunal ought to have awarded interest at 7.5% per annum. Accordingly, this Court refixes the interest at 7.5% per annum instead of 9.5% erroneously fixed by the Tribunal.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced by this Court to Rs.3,93,000/- from Rs.2,00,000/- in the following manner:

Heads	Award Amount (Rs.)
Loss of earning capacity	3,24,000/- (3000 x 12 x 15 x 60)
Pain and suffering	26,000/-
Loss of amenities	10,000/-
Loss of expectation of life	10,000/-
Loss of earnings	15,000/-
Transportation	2,000/-
Extra nourishment	2,000/-
Damages	1,000/-
Other expenses	1,000/-
Medical expenses	2,000/-
Total	3,93,000/-

11. In the result, this civil miscellaneous appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified award amount of Rs.3,93,000/- together with interest at 7.5% per annum from the date of claim till the date of realisation, excluding the period of delay in filing this appeal i.e., 708 days, and costs, after deducting the amount already deposited if any, to the credit of MCOP.No.3783 of 2006 within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit recover the same from the first respondent, the owner of the vehicle. On such deposit, the Tribunal shall transfer the amount lying to the credit of MCOP.No.3783 of 2006 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The II Court of Small Causes, Chennai

Copy To

The Section Officer,
High Court of Madras

+1cc to M/s.M.Malar, Advocate SR.No.42173

C.M.A.No.1221 of 2016

SR II(CO)
GMY(01/11/2021)