



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2074 of 2015

Sikkandhar

...Appellant/Petitioner/Claimant

Vs

K.Senthil

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 30.04.2014 and made in MACTOP.No.6167 of 2012 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : No appearance

JUDGMENT

(Heard through video conferencing)

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the Impugned Award dated 30.04.2014 passed by the Motor Accident Claims Tribunal (3rd Court of Small Causes, Chennai) in MCOP.No.6167 of 2014.

2. The Tribunal has directed the respondent to pay the Appellant a compensation of Rs.6,89,000/- for the injuries sustained by the Appellant as a result of an accident caused by a vehicle owned by the respondent on 06.11.2012.

3. Heard Mr.F.Terry Chella Raja, learned counsel for the Appellant/claimant. The respondent has remained exparte both before the Tribunal as well as this Court.

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

Heads	Award Amount (Rs.)
Loss of income	42,000/-



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Heads	Award Amount (Rs.)
Transport to hospital	20,000/-
Extra nourishment	25,000/-
Damage to clothing	1,000/-
Medical Expenses	3,36,000/-
Future Medical Expenses	50,000/-
Attender charges	20,000/-
Loss of amenities for life	25,000/-
Pain and suffering	50,000/-
Permanent disability	1,20,000/-
Total	6,89,000/-

5. The Appellant/claimant was a businessman having a shop at Pondy Bazaar in Chennai. In the claim petition, he has pleaded that he was earning Rs.15,000/- per month. Before the Tribunal, he has filed his identity card to show that he is having a shop at Pondy Bazaar which has been marked as Ex.P12. The Appellant/claimant has sustained the following injuries namely (a) traumatic right sylvian fissure sub archnoid haemorrhage, (b) right distal radius fracture, (c) right fracture tibial plateau, (d) multiple soft tissue injuries, (e) ORIF with valcp right distal radius, (f) ORIF right tibial plateau and (g) multiple injuries all over the body as a result of an accident on 06.11.2012. The Award which is under challenge is an exparte award and the respondent who is owner of the vehicle which caused the accident has remained exparte before the Tribunal.

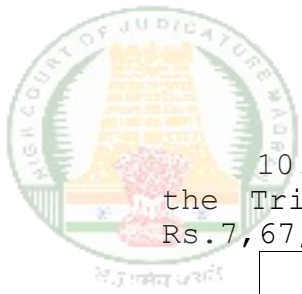
6. The main contention of the Appellant/claimant is that the Tribunal ought to have fixed his notional monthly income at a higher sum and should have adopted multiplier method for assessing the loss of earning capacity of the Appellant/claimant. The Appellant/claimant was hospitalised only for a period of nine days as seen from the discharge summary issued by the Apollo hospital which has been marked as Ex.P2. This being the case, the Tribunal has rightly not adopted the multiplier method for assessing the loss of earning capacity of the Appellant/claimant and has rightly adopted the percentage method for assessing the disability compensation. However, the Tribunal has erroneously failed to take into consideration the year of the accident for the purpose of assessing the disability compensation for the Appellant/claimant.



7. The accident happened in the year 2013. The Doctor has assessed the disability of the Appellant/claimant at 70% as seen from Ex.P13 which is on the higher side and this Court is of the considered view that the Tribunal has rightly reduced the same to 60% based on the injuries sustained by the Appellant/claimant and his period of hospitalisation. Therefore, the assessment of disability by the Tribunal at 60% is confirmed by this Court. The Tribunal has assessed the disability compensation for the Appellant/claimant's 60% disability at Rs.1,20,000/- calculated at Rs.2,000/- per percentage of disability which is low and it has to be necessarily enhanced by this Court. If the year of the accident was given due consideration, the Tribunal ought to have assessed the disability compensation at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by it. Accordingly, this Court enhances the disability compensation for the Appellant/claimant at Rs.1,80,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.1,20,000/- calculated at Rs.2,000/- per percentage of disability for the 60% disability.

8. With regard to the compensation awarded by the Tribunal towards loss of income at Rs.42,000/- is concerned, the same has to be necessarily enhanced as the notional monthly income of the Appellant/claimant fixed by the Tribunal at Rs.7,000/- is too low, considering the fact that the Appellant/claimant is a businessman doing business at Pondy Bazaar, Chennai as seen from the Identity card produced by him which has been marked as Ex.P13. It is a well known fact that Pondy Bazaar is the heart of the commercial activity in the city of Chennai. Therefore, this Court enhances the notional monthly income of the Appellant/claimant to Rs.10,000/- from Rs.7,000/- fixed by the Tribunal. The Tribunal has rightly awarded a compensation towards loss of income to the Appellant/claimant for a period of six months, after giving due consideration to the nature of injuries sustained by the Appellant/claimant as a result of the accident. However, in view of the fact that the notional monthly income of the Appellant/claimant is enhanced to Rs.10,000/- by this Court, the loss of income of the Appellant/claimant during the period of his treatment is enhanced to Rs.60,000/- instead of Rs.42,000/- fixed by the Tribunal.

9. With regard to the compensation assessed by the Tribunal under various other heads namely transportation, extra nourishment, damage to clothing, medical expenses, future medical expenses, attender charges, loss of amenities and pain and suffering are concerned, the same is a just compensation and there is no scope for interference by this Court. Accordingly, the same is confirmed by this Court.



10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced by this Court from Rs.6,89,000/- to Rs.7,67,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	42,000/-	60,000/-
Transport to hospital	20,000/-	20,000/-
Extra nourishment	25,000/-	25,000/-
Damage to clothing	1,000/-	1,000/-
Medical Expenses	3,36,000/-	3,36,000/-
Future Medical Expenses	50,000/-	50,000/-
Attender charges	20,000/-	20,000/-
Loss of amenities for life	25,000/-	25,000/-
Pain and suffering	50,000/-	50,000/-
Permanent disability	1,20,000/-	1,80,000/-
Total	6,89,000/-	7,67,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The respondent is directed to deposit the modified award amount of Rs.7,67,000/- after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.6167 of 2013 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.6167 of 2013 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The III Court of Small Causes, Chennai.

2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.M. Malar, Advocate sr 38650.

C.M.A.No.2074 of 2015

RSV(CO)
SP(27/10/2021)