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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2495 of 2015

Gurumurthy

...Appellant/Appellant

Vs

1. M/s.Green House Promoters Pct. Ltd.,
No.114, Sir Thiyagaraya Road,
Menakampala Arcade,
T.Nagar,
Chennai
(Since R1 remained exparte
before the Tribunal its
presence may be dispensed
with)

2. National Insurance Co. Ltd.,
No.18, North Usman Road,
Chennai - 17

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and decree dated 23.09.2014 and made in MCOP.No.4686 of 2009 on the file of the Motor Accident Claims Tribunal (In the court of III Small Causes) Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondent 2 : Mr.J.Chandran

For Respondent 1 : Exparte

JUDGMENT

(This case is heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 23.09.2014 passed by the Motor Accident Claims Tribunal (III Court of Small Causes, Chennai) in MCOP.No.4686 of 2009.



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

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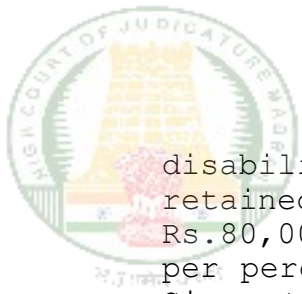
3. Heard Ms.A.Subadra, learned counsel representing Ms.M.Malar, learned counsel for the Appellant and Mr.J.Chandran, learned counsel for the second respondent Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

4. The details of the compensation awarded by the Tribunal to the first respondent/claimant are as follows:

Heads	Award Amount (Rs.)
Loss of income	15,000/-
Transport to Hospital	3,000/-
Extra nourishment	5,000/-
Damage to clothing	500/-
Medical expenses	3,103/-
Pain and suffering	25,000/-
Disability at 40%	80,000/-
Total	1,31,603/-

5. The main contention of the Appellant/claimant is that the Tribunal ought to have adopted the multiplier method and ought to have granted compensation towards loss of earning capacity to him. It is also his contention that the compensation awarded by the Tribunal under various heads is inadequate and it is not a just compensation.

6. The appellant/claimant has sustained fracture of right hand elbow, fracture of left foot, dislocation of left hip and multiple injuries all over his body. He was hospitalised between the period from 17.07.2008 to 28.07.2008 as seen from the discharge summary which has been marked as an exhibit before the Tribunal. The nature of injuries sustained by the Appellant/claimant and the period of hospitalisation has not been disputed by the second respondent Insurance Company before the Tribunal. The Doctor (PW3) who has examined the Appellant/claimant has assessed the Appellant's/claimant's disability at 55%. However, the Tribunal without assigning any reason has reduced the disability on its own to 40%. This Court is of the considered view that after giving due consideration to the nature of injuries sustained by the Appellant/claimant, the



disability assessed by the Doctor at 55% will have to be retained. The Tribunal has awarded a disability compensation of Rs.80,000/- to the Appellant/claimant calculated at Rs.2,000/- per percentage of disability for 40% disability assessed by it. Since the percentage of disability has been enhanced to 55% by this Court, the disability compensation is reassessed by this Court at Rs.1,10,000/- calculated at Rs.2,000/- per percentage of disability for 55% disability.

7. The Tribunal has awarded a compensation of Rs.15,000/- to the Appellant/claimant towards loss of income during the period of his treatment. The Appellant/claimant was a driver by profession at the time of the accident. The Tribunal has assessed the notional monthly income of the Appellant/claimant at Rs.5,000/- for an accident that happened in the year 2008 and the same is confirmed by this Court. However, considering the nature of injuries sustained by the Appellant/claimant and his period of hospitalisation as well as the report given by the Doctor PW3 that he would suffer some difficulty in doing his profession as a driver, due to the injuries sustained by him, this Court is of the considered view that at least for a period of six months, the Appellant/claimant could have been unable to do his regular work as a driver. Therefore, the compensation towards loss of income is enhanced to Rs.30,000/- calculated at Rs.5,000/- per month for a period of six months instead of Rs.15,000/- fixed by the Tribunal.

8. Similarly the compensation awarded by the Tribunal towards transportation, extra nourishment and damages to clothing is also low and is not in accordance with the settled practice and therefore, this Court enhances the same to Rs.10,000/-, Rs.10,000/- and Rs.1,000/- respectively.

9. With regard to the compensation of Rs.3,103/- fixed by the Tribunal towards medical expenses is concerned, the same is confirmed by this Court as it is only in accordance with the medical bills submitted by the Appellant/claimant before the Tribunal.

10. The compensation awarded by the Tribunal towards pain and suffering at Rs.25,000/- is also a just compensation and does not call for any interference.

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.1,89,103/- by this Court from Rs.1,31,603/- fixed by the Tribunal as detailed hereunder:



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	15,000/-	30,000/-
Transport to Hospital	3,000/-	10,000/-
Extra nourishment	5,000/-	10,000/-
Damage to clothing	500/-	1,000/-
Medical expenses	3,103/-	3,103/-
Pain and suffering	25,000/-	25,000/-
Disability at 40%	80,000/-	1,10,000/-
Total	1,31,603/-	1,89,103/-

12. In the result, this civil miscellaneous appeal is partly allowed by enhancing the compensation from Rs.1,31,603/- to Rs.1,89,103/-. 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, to the credit of MCOP.No.4686 of 2009 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.4686 of 2009 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The court of III Small Causes,
Chennai.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.36353

+1cc to Ms.M.Malar, Advocate, S.R.No.36225

C.M.A.No.2495 of 2015

RLD[co]

NSK 30/11/2021