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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.7.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

Civil Miscellaneous Appeal No.1603 of 2016

J.Thomas

...Appellant/Petitioner

Vs

1.M.Jayasankar

2.National Insurance Company Ltd.,
Chennai-2.

...Respondents/Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 21.1.2016 in MCOP.No.5138 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub-Judge I to deal with MCOP Cases), Chennai.

For Appellant : Ms.P.T.Saleem Fathima

For Respondent-2 : Mr.S.Vadivel

Respondent-1 : Insufficient address

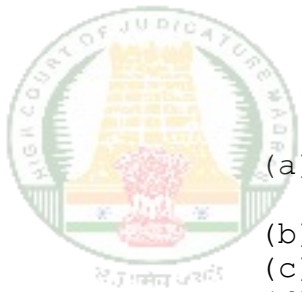
JUDGMENT

I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

2. This appeal has been filed by the appellant herein/claimant seeking enhancement of the compensation under the impugned award dated 21.1.2016 passed by the Motor Accidents Claims Tribunal (Special Sub-Judge-I to deal with MCOP Cases), Chennai [for short, the Tribunal] in MCOP.No.5138 of 2013.

3. The appellant herein/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal, has preferred this appeal seeking enhancement.

4. The details of compensation awarded by the Tribunal under the impugned award to the appellant herein/claimant are as follows :



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(a) Expenses relating to treatment, hospitalization and medicines	:	Rs.	12,740/-
(b) Loss of earning during treatment	:	Rs.	39,000/-
(c) Expenses towards conveyance	:	Rs.	8,000/-
(d) Extra nourishment cost	:	Rs.	10,000/-
(e) Attender charges	:	Rs.	4,000/-
(f) Damages to clothing and articles	:	Rs.	1,000/-
(g) Compensation for disability	:	Rs.	1,38,000/-
(h) Pain and sufferings	:	Rs.	50,000/-
(i) Compensation for loss of future amenities and disfigurements	:	Rs.	25,000/-
(j) Loss of expectation of life	:	Rs.	15,000/-

Total: Rs. 3,02,740/-

5. The appellant herein - claimant sustained the following injuries as a result of the accident on 10.8.2013 caused by the vehicle owned by the first respondent and insured with the second respondent:

- "(a) Fracture of frontal bone on the right side adjacent to the midline;
(b) Fracture involving the lateral wall of the right maxillary sinus;
(c) Fracture involving the right zygoma and lateral wall of right orbit;
(d) Fracture of right side fibula and dislocation in right ankle; and
(e) Fracture right sphenoid and coronoid process of mandible."

6. The appellant herein/claimant was aged 52 years at the time of accident. The age, avocation and nature of injuries sustained by the appellant herein/claimant as a result of the accident had not been disputed by the second respondent herein before the Tribunal.

7. In the claim petition, the appellant herein/claimant pleaded that he was earning Rs.10,000/- as an accountant in a company called as Techno Plastic Private Limited, Chennai-1. However, the Tribunal fixed the notional monthly income at Rs.6,500/- based on the decision of the Hon'ble Supreme Court in the case of Syed Sadiq & Others Vs. Divisional Manager, United India Insurance Co. Ltd. [reported in 2014 ACJ 627].

8. This Court is of the considered view that the said assessment is an erroneous assessment. In the said decision, the accident occurred in the year 2008 and two of the injured were vegetable vendors.



9. In the case on hand, the claimant was working as an accountant in a private concern and the accident occurred in the year 2013. Therefore, the yardstick fixed in the decision of the Hon'ble Supreme Court in the case of Syed Sadiq cannot be applied to the facts of this case. Further, in the instant case, after giving due consideration of the avocation of the appellant herein/claimant, who was working as an accountant at the time of accident, this Court fixes his notional monthly income at Rs.8,000/- instead of Rs.6,500/- as fixed by the Tribunal.

10. The Tribunal assessed loss of income to the appellant during the period of taking treatment at Rs.39,000/- calculated at Rs.6,500/- per month i.e for a period of six months and it is hereby enhanced to Rs.48,000/- by this Court by calculating at Rs.8,000/- per month for a period of six months.

11. The Tribunal awarded a compensation of Rs.8,000/- towards conveyance, Rs.10,000/- towards extra nourishment, Rs.4,000/- towards attender charges, Rs.1,000/- towards damages to clothing and articles and Rs.25,000/- towards loss of future amenities and disfigurements, which have to be necessarily enhanced, as the Tribunal has not given due consideration to the nature of injuries sustained by the appellant herein - claimant as well as to the year of accident. This Court enhances the compensation awarded towards conveyance from Rs.8,000/- to Rs.10,000/-, towards extra nourishment from Rs.10,000/- to Rs.15,000/-, towards attender charges from Rs.4,000/- to Rs.10,000/-, towards damages to clothing and articles from Rs.1,000/- to Rs.2,000/- and towards loss of future amenities and disfigurements from Rs.25,000/- to Rs.40,000/-.

12. With regard to the disability compensation assessed by the Tribunal at Rs.1,38,000/-, the same is also not a just compensation for the following reason :

The doctor, who had been examined as PW3 before the Tribunal, assessed the disability of the appellant herein - claimant in the manner indicated below :

- (a) Neuro disability at 40%
- (b) Eye disability at 40%
- (c) Ortho disability at 25% and
- (d) Dental disability at 40%.

Ultimately, the Tribunal assessed the overall disability at 46%. This Court, after giving due consideration to the nature of injuries sustained by the appellant herein - claimant as indicated supra, is of the view that the assessment of overall disability is on the lower side and this Court enhances the same to 75% instead of 46% as fixed by the Tribunal.



13. The accident occurred in the year 2013. The Tribunal fixed the disability compensation at Rs.1,38,000/- to the appellant herein - claimant, which cannot at all be considered to be a just compensation. For an accident that took place in the year 2013, it is settled practice to fix the compensation calculated at Rs.3,000/- per percentage of disability. Accordingly, this Court enhances the disability compensation from Rs.1,38,000/- to Rs.2,25,000/- calculated at Rs.3,000/- per percentage of disability.

14. With regard to the compensation awarded by the Tribunal towards medical expenses at Rs.12,740/-, pain and sufferings at Rs.50,000/- and loss of expectation of life at Rs.15,000/-, the same are just and as such, they are confirmed.

15. For the foregoing reasons, the total compensation awarded by the Tribunal is enhanced by this Court from Rs.3,02,740/- to Rs.4,27,740/- as detailed hereunder :

(a) Expenses relating to treatment, hospitalization and medicines	: Rs. 12,740/-
(b) Loss of earning during treatment	: Rs. 48,000/-
(c) Expenses towards conveyance	: Rs. 10,000/-
(d) Extra nourishment cost	: Rs. 15,000/-
(e) Attender charges	: Rs. 10,000/-
(f) Damages to clothing and articles	: Rs. 2,000/-
(g) Compensation for disability	: Rs. 2,25,000/-
(h) Pain and sufferings	: Rs. 50,000/-
(i) Compensation for loss of future amenities and disfigurements	: Rs. 40,000/-
(j) Loss of expectation of life	: Rs. 15,000/-
Total	: Rs. 4,27,740/-

which is rounded off to Rs.4,30,000/- (Rupees four lakhs and thirty thousand only).

16. Accordingly, the above civil miscellaneous appeal is partly allowed by enhancing the total compensation at Rs.4,30,000/- as indicated above. The second respondent - Insurance Company is directed to deposit the entire award amount as determined by this Court in this appeal together with interest at the rate of 7.5% per annum from the date of claim petition till date of realization less the amount already deposited to the credit of the claim petition within two weeks from the date of receipt of a copy of this judgment. On such deposit of the entire award amount to the extent indicated in this judgment, the Tribunal is directed to transfer the entire



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award amount together with interest lying to the credit of the claim petition directly to the bank account of the appellant herein through RTGS within two weeks thereafter. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

RS

To

The Motor Accidents Claims Tribunal
(Special Subordinate Judge I to deal with MCOP Cases),
Chennai.

Copy to

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

+1cc to M/s.P.T.Saleem Fathima, Advocate, S.R.No.33755
+1cc to Mr.S.Vadivel, Advocate, S.R.No.33461

CMA.No.1603 of 2016

AJS[co]
NSK 22/11/2021