



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1664 of 2016

S.Baskaran

...Appellant/Petitioner

Vs

1. B.Mangala Ram

2. Bajaj Allianz Gen. Ins. Co. Ltd.,
Prince Towers, 5th Floor,
25/26 College Road,
Chennai - 600 006.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 07.08.2013 and made in MCOP.No.1546 of 2010 on the file of the IV Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.P.D.Selvaraj

For Respondent 1 : Exparte

For Respondent 2 : Mr.J.Michael Visuwasam
for Mr.R.V.Sivaraj

JUDGMENT

(Heard through video conferencing)

This civil miscellaneous appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 07.08.2013 passed by the Motor Accident Claims Tribunal, (II Court of Small Causes, Chennai) in MCOP.No.1546 of 2010.

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

3. The Tribunal under the impugned award has directed the second respondent Insurance Company to pay the Appellant/claimant a compensation of Rs.1,67,800/- after deducting 25% towards the contributory negligence of the Appellant/claimant as detailed hereunder:



३.१.२. अमेरिका में

9. The accident happened on 05.01.2009. The Tribunal has assessed the disability compensation at Rs.90,000/- calculated at Rs.1,800/- per percentage of disability for the 50% disability. This Court is of the considered view that the Tribunal has not taken into consideration the year of the accident before assessing the disability compensation. If the year of the accident was taken into consideration, the Tribunal ought to have fixed the disability compensation at Rs.3,000/- per percentage of disability instead of Rs.1,800/-. Accordingly, the disability compensation re-assessed by this Court is Rs.2,10,000/- calculated at Rs.3,000/- per percentage of disability for 70% disability suffered by the Appellant/claimant instead of Rs.90,000/- erroneously fixed by the Tribunal for 50% disability assessed by it at Rs.1,800/- per percentage of disability.



10. The contributory negligence fixed by the Tribunal under the impugned award at 25% on the part of the Appellant /claimant is a correct assessment. The Tribunal has given due consideration to the fact that the FIR registered against the insured vehicle has been closed as mistake of fact and has also given due consideration to the admission made by the eye-witness to the accident namely PW3 who has deposed that the insured vehicle was stationary at the time of the accident and only the Appellant/claimant on his own had dashed against the insured vehicle which resulted in his fall and sustaining injuries.

11. The Tribunal under the impugned award has failed to award any compensation towards attender charges to the Appellant/claimant which he is legally entitled to as per the settled law as he was hospitalised for a period of 15 days and he would have certainly required the assistance of an attender during the period of his hospitalisation and thereafter also. After giving due consideration to the nature of injuries sustained by the Appellant/claimant and the period of hospitalisation, this Court awards a compensation of Rs.20,000/- towards attender charges.

12. With regard to compensation towards medical expenses is concerned, the same is confirmed by this Court as the same is supported by medical bills which were marked as Ex.P8 & Ex.P9.

13. With regard to compensation under various heads namely loss of earnings, transport to hospital, extra nourishment and pain and suffering are concerned, the same cannot be considered to be inadequate and therefore, this Court confirms the same.

14. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.2,72,800/- from Rs.1,67,800/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
Loss of earning	20,000/-	20,000/-
Transport to hospital	15,000/-	15,000/-
Extra nourishment	15,000/-	15,000/-
Pain and suffering	50,000/-	50,000/-
Disability	90,000/- (50 x 1800)	2,10,000/- (70 x 3000)



WEB COPY

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
Attender charges	--	20,000/-
Total	1,90,000/-	3,30,000/-
Less: 25% contributory negligence	47,500/-	82,500/-
Balance	1,42,500/-	2,47,500/-
Add: Medical expenses	25,264/-	25,264/-
Award Amount	1,67,764/-	2,72,764/-
Rounded off to	1,67,800/-	2,72,800/-

15. 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.2,72,800/- together with interest at 7.5% per annum from the date of claim till the date of realisation and costs, after deducting the amount already deposited if any, to the credit of MCOP.No.1546 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal shall transfer the amount lying to the credit of MCOP.No.1546 of 2010 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

nl

To

1. The IV Judge, Court of Small Causes, MACT, Chennai

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

+1cc to Mr.J.Michael Viswasam, Advocate, S.R.No.42199

C.M.A.No.1664 of 2016

SV-I (CO)

RGA(18/11/2021)