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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1667 of 2016

Kannan ...Appellant /Petitioner

Vs

1.Subramani

2.National Ins. Co, Ltd.,
Branch Office,
No.74-A, Paramathi Road,
Namakkal.

3.Jayaraj

4.Reliance General Ins. Co., Ltd.,
No570, Brance Issuance Office,
Shir Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri,
Salem - 606 004.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree passed in MCOP.No.28 of 2014 dated 09.02.2016 on the file of MACT/Additional District Court at Namakkal.

For Appellant : Mr.S.Sankar

For Respondent 2 : Mr.D.Bhaskaran

For Respondent 4 : Mr.S.Arunkumar

For Respondents 1 & 3 : Exparte

JUDGMENT

(This case is heard through Video Conferencing)

This civil miscellaneous appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 09.02.2016 passed by the Motor Accident Claims Tribunal (Additional District Judge, Namakkal) in MCOP.No.28 of 2014.



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

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3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Disability	40,000/-
Medical bills	3,35,055/-
Loss of amenities	10,000/-
Pain and suffering	10,000/-
Extra nourishment	5,000/-
Attender charges	5,000/-
Total	4,05,055/-
Rounded off to	4,05,100/-

4. The Appellant/claimant sustained multiple grievous injuries all over his body including severe fracture on his head and left rib on 20.07.2013 as a result of an accident caused by two vehicles namely one Max Cap Van bearing registration No.TN78 6878 insured with the second respondent and another lorry bearing registration No.TN69 AC 5379 insured with the fourth respondent Insurance Company.

5. The Tribunal under the impugned award after assessing the compensation held that both the vehicles are equally liable for the cause of the accident which resulted in the Appellant/claimant sustaining injuries and fixed the contributory negligence in the ratio of 50:50.

6. Before the Tribunal, the Appellant/claimant have filed 16 documents which were marked as Ex.A1 to Ex.A16 and two witnesses were examined on his side namely, the Appellant/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the respondents neither any document was filed nor any witness examined before the Tribunal.

7. The Doctor assessed the disability of the Appellant/claimant at 20% which has been accepted by the Tribunal. Accordingly, 20% was assessed by the Tribunal as the

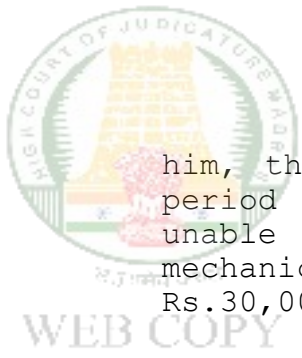


disability suffered by the Appellant/claimant. The Tribunal has assessed the disability compensation at Rs.40,000/- calculated at Rs.2,000/- per percentage of disability which in the considered view of this Court is low. If the year of the accident was considered, the Tribunal ought to have assessed the disability compensation at a higher sum. It is settled practice for an accident of the year 2013, Courts generally fix the disability compensation at Rs.3,000/- per percentage of disability. Accordingly, this Court enhances the disability compensation to Rs.60,000/- calculated at Rs.3,000/- per percentage of disability from Rs.40,000/- calculated at Rs.2,000/- per percentage of disability fixed by the Tribunal.

8. With regard to the compensation fixed towards medical expenses at Rs.3,35,055/- is concerned, the same is confirmed by this Court as the same has been assessed only in accordance with the medical bills produced by the Appellant/claimant before the Tribunal. However, the Tribunal has awarded a lesser compensation towards loss of amenities at Rs.10,000/-, towards pain and suffering at Rs.10,000/- and towards attender charges at Rs.5,000/- which has to be necessarily enhanced considering the nature of injuries sustained by the Appellant/claimant to Rs.20,000/-, Rs.20,000/- and Rs.10,000/- respectively. However, the compensation awarded by the Tribunal towards extra nourishment at Rs.5,000/- is a just compensation and the same is confirmed by this Court.

9. The Tribunal has erroneously failed to award any compensation towards conveyance which the Appellant/claimant is legally entitled to. Considering the nature of injuries sustained by him, this court awards a compensation of Rs.5,000/- towards conveyance.

10. The Tribunal has erroneously determined the notional monthly income of the Appellant/claimant at Rs.6,500/-, though the appellant/claimant was a lorry owner cum mechanic and the accident took place in the year 2013. For an accident of the year 2013 and that too, when the Appellant/claimant is a lorry owner cum mechanic, the Tribunal ought to have fixed the notional monthly income of the Appellant/claimant at a higher sum. After giving due consideration to the year of the accident as well as the avocation of the Appellant/claimant, this Court enhances the notional monthly income of the Appellant/claimant to Rs.10,000/- instead of Rs.6,500/- fixed by the Tribunal. The Tribunal has also erroneously failed to award any compensation towards loss of income which the Appellant/claimant is legally entitled to. Considering the nature of injuries sustained by



him, this Court is of the considered view that at least for a period of three months, the Appellant/claimant would have been unable to do his regular avocation as a lorry owner cum mechanic. Accordingly, this Court awards a compensation of Rs.30,000/- towards loss of income for a period of three months.

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.4,85,100/- from Rs.4,05,100/- fixed by the Tribunal as detailed hereunder:

Heads	Amount awarded by this Court (Rs.)	Amount awarded by the Tribunal (Rs.)
Disability	40,000/-	60,000/-
Medical bills	3,35,055/-	3,35,055/-
Loss of amenities	10,000/-	20,000/-
Pain and suffering	10,000/-	20,000/-
Extra nourishment	5,000/-	5,000/-
Attender charges	5,000/-	10,000/-
Conveyance	---	5,000/-
Loss of income	---	30,000/-
Total	4,05,055/-	4,85,055/-
Rounded off to	4,05,100/-	4,85,100/-

12. Since the second respondent insurance company and the fourth respondent Insurance Company were directed to pay the assessed compensation amount in equal proportions by the Tribunal, the same is confirmed by this Court and the enhanced compensation as determined by this Court has to be paid by both the insurance companies in equal proportions to the Appellant/claimant.

13. In the result, the appeal is partly allowed by enhancing the award amount from Rs.4,05,100/- to Rs.4,85,100/-. The second and fourth respondents/Insurance companies are directed to deposit the enhanced award amount in equal proportions, together with interest 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.28 of 2014 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.28 of 2014 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 Additional District Court,
Namakkal.

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

+lcc to M/s.S.Arunkumar, Advocate Sr.37961

C.M.A.No.1667 of 2016

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