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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1698 of 2016

and

Cros.Obj.No.18 of 2017

P.Murugesan

... Appellant in CMA No.1698
of 2016 and Ist Respondent
in Cross Objection No.18 of 2017

..Vs..

1.G.Balaguru

(set ex parte in the Trial Court) ...Ist Respondent in CMA
No.1698 of 2016

and

2nd Respondent in Cross
Objection No.18 of 2017

2.The New India Assurance Co. Ltd.,
Motor Third Party Claims HUB,
Bombay Mutual Buildings, 6th Floor,
No.232, N.S.C. Bose Road,
Chennai - 600 001.

... 2nd Respondent in
C.M.A.No.1698 of 2016 and
Cross Objector in Cross
Objection No.18 of 2017

Prayer in C.M.A. No.1698 of 2016 and Cross Objection No.18 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, Cross Objection filed U/o 41 Rule 22 of C.P.C against the Judgment and decree dated 05.11.2015 made in MACT.O.P.No.212 of 2014 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.



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For Appellant in C.M.A. : Ms.P.T.Salim Fathima
& for R1 in Cros.Obj.
For R2 in C.M.A. : Mr.D.Nadhamuni
& for cross objector
in Cros.obj.
For R1 in C.M.A. : Ex parte
& R2 in Cros.Obj.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 05.11.2015 passed by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) in M.C.O.P.No.212 of 2014.

2. Heard Ms.P.T.Salim Fathima, learned counsel for the Appellant/claimant and Mr.D.Nadhamuni, learned counsel for the second respondent/ Insurance Company. The first respondent has remained ex parte both before the Tribunal as well as this Court.

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

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

Heads	Award Amount (Rs.)
Transportation, nourishing food and miscellaneous expenditure	50,000/-
Medical Expenses	1,11,586/-
Attender Charges	23,000/-
Disability	1,20,000/-
Loss of Future Earning Capacity	6,24,000/-
Loss of earning during the period of treatment	20,000/-
Damages for pain,	1,00,000/-



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Heads	Award Amount (Rs.)
suffering and trauma	
Loss of amenities	50,000/-
Total	10,98,586/- rounded off to Rs.10,98,600/-

5. The appellant/claimant in his claim petition has pleaded that he was the Supervisor and was earning a sum of Rs.12,000/- per month at the time of the accident which happened on 14.12.2013. The cause of the accident has not been disputed by the respondents. The only question that arises for consideration in this appeal is whether the appellant/claimant is entitled for enhancement of compensation or not.

6. Since no documentary evidence was produced by the appellant/claimant in support of his monthly income, the Tribunal has fixed the notional monthly income of the appellant/claimant at Rs.10,000/-. The accident happened in the year, 2013. This Court is of the considered view that since the appellant/claimant claims to be a Supervisor, the monthly income fixed by the Tribunal at Rs.10,000/- is low and it has to be enhanced to Rs.11,000/-. The Doctor has assessed the disability of the appellant/claimant at 40% and the Tribunal has accepted the said assessment under the impugned award.

7. This Court on 13.09.2021, had directed the learned counsel for the appellant to produce the appellant before this Court for personal examination. As directed by this Court, the appellant is personally present before this Court today. On the last hearing date, i.e. on 13.09.2021, the learned counsel for the appellant has produced the latest photographs of the appellant/claimant with regard to the injury. When this Court personally saw the appellant/claimant today, the injury shown in the photographs matches with the injury of the appellant/claimant as noticed by this Court today. The appellant/claimant is unable to walk without limping as noticed by this Court. This Court is of the considered view that the Tribunal ought to have given due consideration to the grievous injuries sustained by the appellant/claimant in his ankle, which is a permanent disability and ought to have awarded Loss of Future Prospects. Since the Tribunal has not awarded Loss of Future Prospects to the appellant/claimant, this Court awards



Loss of Future Prospects at 25%, as the appellant/claimant was aged at 46 years at the time of the accident. Since the notional monthly income of the appellant/claimant is enhanced to Rs.11,000/- by this Court instead of Rs.10,000/- erroneously fixed by the Tribunal, compensation payable to the appellant/claimant towards Loss of Future Earning Capacity is re-assessed by this Court at Rs.8,58,000/- as detailed hereunder instead of Rs.6,24,000/- erroneously fixed by the Tribunal.

Rs.11,000/- + 25% Future Prospects x 12 months x proper multiplier of 13
x 40% Disability

$$11,000 + 2,750 \times 12 \times 13 \times 40 / 100 = \text{Rs.8,58,000/-}$$

8. However, this Court is of the considered view that the Tribunal has erroneously awarded disability compensation separately to the appellant/claimant at Rs.1,20,000/- which will amount to duplication and the said compensation, the Insurance Company is not liable to pay. Therefore the disability compensation awarded by the Tribunal at Rs.1,20,000/- under the impugned award is hereby set aside by this Court.

9. Insofar as the compensation awarded by the Tribunal under various other heads, namely, Transportation, Extra nourishment and miscellaneous expenditure, Medical expenses, Attender charges, Loss of earning during the period of treatment, Damages for pain, suffering and Trauma and Loss of amenities are concerned, this Court is of the considered view that the compensation awarded by the Tribunal cannot be considered to be inadequate as alleged by the appellant/claimant and therefore, the same is confirmed.

10. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.10,98,586/- to Rs.12,12,586/- as detailed hereunder:



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Transportation, nourishing food and miscellaneous expenditure	50,000/-	50,000/-
Medical Expenses	1,11,586/-	1,11,586/-
Attender charges	23,000/-	23,000/-
Disability	1,20,000/-	-
Loss of Future Earning Capacity	6,24,000/-	8,58,000/-
Loss of earning during the period of treatment	20,000/-	20,000/-
Damages for pain, suffering and trauma	1,00,000/-	1,00,000/-
Loss of amenities	50,000/-	50,000/-
Total	10,98,586/-	12,12,586/-

Conclusion:

11. In the result, this appeal shall stands partly allowed. The Second Respondent Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.12,12,586/- (Rupees Twelve lakhs Twelve thousand Five hundred and Eight Six only) together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited to the credit of M.C.O.P.No.212 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 is directed to transfer the amount lying to the credit of M.C.O.P.No.212 of 2014 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellant before receiving the copy of this Judgment.



12. Since the compensation awarded by the Tribunal has been enhanced by this Court, the Cross Objection filed by the Insurance Company in Cros.Obj.No.18 of 2017 does not deserve any merit and the same is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

rsi
To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

2. The Section Officer,
V.R. Section,
High Court of Madras. (+2 Copies)

+1cc to M/s.P.T., Salim Fathima, Advocate Sr.52336
+1cc to M/s.D.Nadhamuni, Advocate Sr.52362

C.M.A.No.1698 of 2016
and
Cros.Obj.No.18 of 2017

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srg 11/04/2022