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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1757 of 2016

P.Sundara Sivaji

....Appellant/Petitioner

versus

1. P.Kaliammal

2. The Oriental Insurance Company Ltd.
No.90-A, KVA Complex,
Thuraiyur Road,
Namakkal Town.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the award in the judgment and decree dated 22.11.2011 and made in MCOP No.5 of 2009 on the file of MACT / Sub Court at Namakkal.

For Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar for R2
R1- Exparte

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award passed by the Motor Accident Claims Tribunal, Sub Court at Namakkal in MCOP No.5 of 2009.

2. The appellant sustained injuries on 18.08.2008 as a result of an accident caused by a vehicle insured with the second respondent. He preferred a claim before the Tribunal against the respondents seeking for compensation.

3. The Tribunal under the impugned award directed the respondents to pay the appellant a compensation of Rs.98,623/- together with interests and costs to the appellant as detailed hereunder:



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Heads	Amount awarded by the Tribunal (Rs.)
35% Disability compensation	35000
Pain and suffering	10000
Loss of amenities	5000
Medical bills	46123
Transportation and extra nourishment	2500
Total	98623

4. The Tribunal has committed a calculation error while assessing the total compensation payable to the appellant / claimant and thus, the total compensation under the impugned award works out only to Rs.98,623/- and not Rs.1,01,123/-.

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

6. Heard Mr.M.Lokesh, learned counsel for the appellant and Mr.S.Arunkumar, learned counsel for the second respondent / Insurance Company. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. The appellant / claimant has sustained both bone fractures in both hands, plates and screws were fixed and there was mal union of bones and the Doctor, who examined him (PW2) has assessed the permanent disability of the appellant / claimant at 40%, as per Ex.P10. The Tribunal however reduced the disability to 35% and has awarded a disability compensation of Rs.35,000/- to the appellant / claimant calculated at Rs.1,000/- per percentage of disability. This Court is of the considered view that the Tribunal ought to have considered the year of the accident before assessing the disability compensation. The accident happened in the year 2008 and considering the year of the accident, the disability compensation is enhanced by this Court to Rs.70,000/- calculated at Rs.2,000/- per percentage of disability instead of Rs.1,000/- per percentage of disability, fixed by the Tribunal. Accordingly, the disability compensation is enhanced to Rs.70,000/- from Rs.35,000/- fixed by the Tribunal.



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9. Insofar as the compensation awarded by the Tribunal towards pain and suffering is concerned, the same is confirmed by this Court as the compensation awarded by the Tribunal under the said head at Rs.10,000/- is a just compensation.

10. However, the Tribunal under the impugned award has granted a lesser compensation towards loss of amenities, transportation and extra nourishment charges which will have to be necessarily enhanced by this Court considering the year of the accident and the nature of the injuries sustained by the appellant / claimant. Accordingly, the compensation awarded by the Tribunal towards loss of amenities is enhanced to Rs.10,000; towards transportation and extra nourishment is enhanced from Rs.2500/- to Rs.10,000/-.

11. The Tribunal has awarded a compensation of Rs.46,123/- towards medical bills based on the medical bills produced by the appellant / claimant before the Tribunal, which were marked as Exhibits. The same is confirmed by this Court.

12. However, the Tribunal failed to award any compensation towards attender charges and this Court is of the considered view that a sum of Rs.5,000/- will have to be awarded to the appellant / claimant towards attender charges, considering the nature of injuries and the period of hospitalisation. Accordingly, Attender charges is fixed by this Court at Rs.5,000/-.

13. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
35% Permanent disability *Rs.1,000/- x 35% #Rs.2,000/- x 35%	35,000 *	70,000 #
Pain and suffering	10,000	10,000
Loss of amenities	5,000	10,000
Medical bills	46,123	46,123
Transportation and extra nourishment	2,500	10,000
Attender charges	-	5,000
Total	98,623/-	1,51,123/-



14. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.98,623/- to Rs.1,51,123/- as indicated above. No costs.

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15. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.5 of 2009 on the file of the Sub Court, Motor Accident Claims Tribunal at Namakkal, 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 award amount directly to the bank account of the appellant /claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2

To :

1. The Sub Judge,
Motor Accident Claims Tribunal,
Sub Court
Namakkal.

2. The Section Officer,
V.R. section,
High Court, Madras - 104.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 24264

+1 CC to Mr.S.Arunkumar, Advocate sr 24068.

C.M.A. No.1757 of 2016

GP(CO)
SP(12/11/2021)