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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1763 of 2016

Arumugam

...Appellant

vs.

1.Baalaraj

2.United India Insurance Co. Ltd.,
Third Party Claims Office,
Co-Operative Building,
No.38, Anna Salai,
Chennai - 108.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.12.2012 and made in M.A.C.T.O.P.No.603/2006 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : R1 - exparte
Mr.C.Paranthaman for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 13.12.2012 passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri in MCOP.No.603 of 2006.

2.Heard Mr.F.Terry Chellaraja, learned counsel for the Appellant and Mr.C.Paranthaman, learned counsel for the second respondent.

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 under the impugned Award are as follows:

Heads	Amount awarded by the Tribunal
Permanent disability	Rs.1,50,000
Pain and Suffering	Rs.15,000
Transportation, extra nourishment and medical expenses	Rs.15,000
Total	Rs.1,80,000/-

5.The Appellant/claimant has sustained the following grievous injuries as a result of an accident which happened on 11.09.2006 caused by a vehicle owned by the first respondent and insured with the second respondent:

- (a) Left frontal compound depressed fracture
- (b) Excision of depressed fracture
- (c) Abrasion left hand
- (d) Head and Eye injuries
- (e) Multiple injuries all over his body.

6.The Appellant/claimant was hospitalized due to the injuries sustained by him as a result of the accident between (a) 11.09.2006 and 19.09.2006, (b) 10.10.2006 and 19.09.2006 and (c) 11.02.2008 and 10.03.2008.

7.Before the Tribunal, the Appellant/claimant has filed 17 documents which were marked as Exs.P1 to P17 which included the discharge summaries issued by the respective hospitals for the period of his hospitalization and also Ex.P10 to prove that the Appellant/claimant has been taking continuous treatment even after getting discharged from the hospital.

8.The main grievance of the Appellant/claimant before the Tribunal is that the Tribunal failed to adopt the multiplier method for the purpose of assessing his loss of earning capacity but instead has erroneously awarded a disability compensation on percentage basis.

9.Learned counsel for the Appellant drew the attention of this Court to various exhibits as well as findings of the Tribunal under the impugned Award. He also drew the attention of this Court to the deposition of PW1 (Appellant/claimant) and deposition of the Doctor who examined the Appellant/claimant (PW2) and would submit that the nature of injuries sustained by



the Appellant/claimant has not been disputed by the respondents before the Tribunal. He would also submit that as seen from the injuries, the Appellant/claimant has sustained grievous injuries in his head as well as his eyes which has been recorded by the Doctor in his disability certificate as well as in the deposition of the Appellant/claimant as well as the Doctor before the Tribunal.

10.This Court has also perused and examined the cross-examination of PW1 and PW2 by the second respondent Insurance Company before the Tribunal. With regard to the injuries which the Appellant/claimant has pleaded in his pleadings as well as in his deposition, the second respondent Insurance Company has also not put any question to the Appellant/claimant as seen from their cross-examinations.

11.The discharge summaries issued by the respective hospitals has also proved long period of hospitalization of the Appellant/claimant as a result of the grievous injuries sustained by him due to the accident. He was hospitalized for the period between (a) 11.09.2006 and 19.09.2006, (b) 10.10.2006 and 19.09.2006 and (c) 11.02.2008 and 10.03.2008.

12.The Tribunal has failed to take note of all these undisputed factors while assessing the compensation payable to the Appellant/claimant.

13.The Appellant/claimant is a carpenter by profession and his avocation has also not been disputed by the respondents before the Tribunal. As a carpenter, the injuries referred to supra which the Appellant/claimant has sustained would have certainly prevented him from doing his avocation in future.

14.All the aforementioned factors were not considered by the Tribunal and therefore, this Court is of the considered view that the disability compensation ought not to have been fixed by the Tribunal on percentage basis but instead, the Tribunal ought to have assessed the loss of earning capacity to the Appellant/claimant by adopting the multiplier method. Therefore, this Court sets aside the disability compensation. But instead compensation is awarded towards loss of earning capacity by adopting the multiplier method. For the purpose of adopting multiplier method, monthly income of the Appellant/claimant will have to be assessed as the Tribunal has not assessed the same under the impugned Award.

15.Being a carpenter, this Court is of the considered view that in the year 2006, the Appellant/claimant would have earned minimum of Rs.4,000/- per month at the time of the accident. Accordingly, this Court fixes monthly income of the



Appellant/claimant at Rs.4,000/- for the purpose of assessing the loss of earning capacity of the Appellant/claimant. This Court after setting aside the disability compensation fixed by the Tribunal at Rs.1,50,000/- awards a compensation of Rs.2,52,000/- to the Appellant/claimant towards loss of earning capacity as detailed hereunder:

Loss of earning capacity = Rs.4,000/- x 12 x 35/100 x 15 = Rs.2,52,000/-

16.This Court assesses the whole body disability of the Appellant/claimant at 35% based on the nature of injuries sustained by the Appellant/claimant as indicated supra at 35% though the same has not been assessed by the Tribunal under the impugned Award.

17.Even though, learned counsel for the second respondent Insurance Company vehemently opposes the adoption of multiplier method by this Court, the same is rejected for the foregoing reasons in view of the fact that the injuries sustained by the Appellant/claimant are grievous in nature which has resulted in hospitalization for a very long period of time and it would have incapacitated the Appellant/claimant from working as a carpenter in the future.

18.With regard to the compensation awarded by the Tribunal under the heads transportation, extra nourishment and medical expenses at Rs.15,000/- are concerned, the same is on the lower side and it has to be enhanced to Rs.10,000/- each as per the settled practice. The Tribunal has awarded a lesser compensation of Rs.15,000/- towards pain and suffering and it has to be enhanced. Accordingly, this Court awards a compensation of Rs.30,000/- towards pain and suffering. However, the Tribunal has failed to Award any compensation towards loss of amenities and attender charges which the Appellant/claimant is legally entitled to as per the settled practice. This Court awards a compensation of Rs.30,000/- towards loss of amenities. Insofar as the compensation towards attender charges is concerned, this Court awards a compensation of Rs.10,000/-.

19.This Court also awards a compensation of Rs.1,000/- to the Appellant/claimant towards damage to clothing in accordance with the settled practice.

20.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.3,53,000/- by this Court as detailed hereunder:



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Heads	Amount awarded by the Tribunal	Enhanced/ modified by this Court
Permanent disability	Rs.1,50,000	Rs.2,52,000 (Rs.4,000 x 12x35/100x15)
Pain and Suffering	Rs.15,000	Rs.30,000
Loss of amenities	-	Rs.30,000
Transportation, extra nourishment and medical expenses	Rs.15,000	Rs.30,000/- (Rs.10,000 each)
Attender charges	-	Rs.10,000
Damage to clothing	-	Rs.1,000
Total	Rs.1,80,000/-	Rs.3,53,000/-

21. In the result, the appeal is allowed. The second respondent is directed to deposit the modified award amount of Rs.3,53,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited if any, to the credit of MCOP No.603 of 2006 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri, within a period of eight 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 shall be paid by the Appellant before receiving the copy of this Judgment. No costs.

Sd/-

Deputy Registrar (Lok Adalat)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
IV Additional District Judge, Ponneri.

2. The Section Officer,
Vernacular Section,
Madras High Court.



+1cc to M/s.M.Malar, Advocate, S.R.No.33216

C.M.A.No.1763 of 2016

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RLD (CO)
CB (28/10/2021)