

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 348 of 2012

1. Janaki Gopalakrishnan ...Appellant

Vs

1. K.V. Nithyanandan

2. T. Vijaya

3. The New India Assurance Co. Ltd.,
Branch Office, 10-214-P.H.Road,
Opp. to District Court,
Chittoor - 517 001 (AP)

4. M. Muthiah

5. Oasis Travels,
Represented by its Partner
G. Radhakrishnan,
No.4, House of lords,
15 & 16, St. Marks Road,
Bangalore - 560 001 (Karnataka)

6. National Insurance Co. Ltd.,
Divisional Office No.1,
No.16, State Bank Road,
Coimbatore - 641 018 (TN)

...Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 25.03.2003 in M.C.O.P.No.1087 of 2001 on the file of the learned Motor Accident Claims Tribunal, Additional District and Sessions Judge(Fast Track Court III, Coimbatore).

For Appellant : Mr. G.K. Muthukumar

For R.1 & R.5 : Not ready in Notice

For R.2 & R.4 : Served

For R.3

: Mr. K. Vinod

For R.6

: M/s. N.B. Surekha

JUDGMENT

Not satisfied with the quantum of compensation, awarded by the Tribunal, under the impugned award dated 25.03.2003 in M.C.O.P.No. 1087 of 2001 passed by the Motor Accidents Claims Tribunal (Fast Track Court No. III), Additional District and Sessions Judge, Coimbatore, the claimant has preferred the present appeal, seeking enhancement.

2. The Tribunal under the impugned award directed the respondents 1 to 3 to pay a compensation of Rs.2,00,000/- (Rupees Two Lakhs only) with interest to the appellant/claimant as detailed here under:-

Heads	Amount awarded by the Tribunal (Rs.)
Permanent Disability (30%) (Rs.1,000/- per percentage)	30,000/-
Pain and sufferings	25,000/-
Medical Expenses	1,40,000/-
Transportation and extra nourishment	5,000/-
Total compensation	2,00,000/-

3. The appellant/claimant has sustained injuries on the left leg, right thigh, forehead and other parts of the body. The appellant/claimant has also sustained fracture in the skull and hip bone dislocation as a result of the injuries sustained due to the accident which occurred on 21.07.2001, caused by a vehicle insured with the third respondent.

4. The nature of injuries sustained by the appellant/claimant as well as the cause of the accident have not been disputed by the respondents as no appeal has been filed aggrieved by the findings of the Tribunal under the impugned award.

5. The only question that arises for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal requires enhancement or not.

6. The Doctor (P.W.3), who examined the appellant/claimant (P.W.2), has assessed the appellant/claimant's disability at 32%. However, the Tribunal has reduced the same to 30% and no reasons have been assigned for the same. Therefore, this Court is of the considered view that the disability assessed by the Doctor at 32% will have to be accepted. Accordingly, this Court fixes the disability of the appellant/claimant at 32% instead of 30%, as erroneously fixed by the Tribunal.

7. The Tribunal has awarded a disability compensation of Rs.30,000/- (Rupees Thirty Thousand only), calculated at Rs.1000/- (Rupees Thousand only) per percentage. Since, the disability of the appellant/claimant has been re-assessed by this Court at 32%, the appellant/claimant is entitled to disability compensation of Rs.32,000/- (Rupees Thirty Two Thousand only) instead of Rs.30,000/- (Rupees Thirty Thousand only), erroneously assessed by the Tribunal.

8. The Tribunal has awarded a compensation of Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and sufferings to the appellant/claimant, which in our considered view, is low and it has to be necessarily enhanced in view of the fact that the appellant/claimant was hospitalized for a period of 21 days and frequently she had to take regular out patient treatment in the hospital. The appellant/claimant has sustained skull bone fracture, and her hip bone has also got dislocated and fracture in the ankle and if the injuries were given due consideration, the Tribunal ought to have awarded higher compensation towards pain and sufferings.

9. After giving due consideration to the nature of the injuries sustained by the appellant/claimant referred to supra, this Court enhances the compensation to the appellant/claimant to Rs.50,000/- (Rupees fifty thousand only) towards pain and sufferings from Rs.25,000/- (Rupees Twenty Five Thousand only), erroneously fixed by the Tribunal.

10. The Tribunal has awarded a compensation of Rs.1,40,000/- (Rupees One lakh Forty Thousand only) towards

medical expenses, even though the medical bills produced by the appellant before the Tribunal which have been marked as Ex.P9 series, Ex.P12 series, Ex.P14 to Ex.P19 is for a total sum of Rs.2,00,000/- (Rupees Two Lakhs only). This Court is of the considered view that no proper reasons have been assigned by the Tribunal for reduction of the amount to Rs.1,40,000/- from Rs.2,00,000/- and without any documentary evidence the Tribunal has erroneously deducted a sum of Rs.60,000/- (Rupees Sixty Thousand only) from and out of the total value of medical bills. Hence this Court is of the considered view that the compensation towards medical expenses will have to be enhanced to Rs.2,00,000/- as per medical bills produced by the appellant instead of Rs.1,40,000/-, erroneously fixed by the Tribunal.

11. The Tribunal has awarded a compensation of Rs.5,000/- (Rupees Five Thousand only) towards transportation and extra nourishment charges to the appellant/claimant which is low. After giving due consideration to the nature of the injuries sustained by the appellant/claimant and the year of the accident, this Court enhances the compensation towards transportation and extra nourishment charges to Rs.10,000/- (Rupees Ten Thousand only) instead of Rs.5,000/-, erroneously fixed by the Tribunal.

12. Under the impugned award the Tribunal has erroneously failed to award any compensation towards attender charges, loss of income for the period of treatment and also compensation towards damages to clothing, which the appellant/claimant is legally entitled to as per the settled law. This Court, after giving due consideration to the year of the accident and the nature of injuries sustained by the appellant/claimant, is inclined to award a sum of Rs.20,000/- towards attender charges, Rs.18,000/- towards loss of income during the period of appellant/claimant's treatment, (calculated at Rs.3,000/- per month for a period of six months) and Rs.1,000/- towards damages to clothing.

13. The compensation awarded by the Tribunal is modified as under by enhancing from Rs.2,00,000/- (Rupees Two Lakhs only) to Rs.3,31,000/- (Rupees Three Lakhs Thirty One Thousand only):-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Permanent Disability	30,000/-	32,000/-	Enhanced

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Compensation for his pain and sufferings	25,000/-	50,000/-	Enhanced
Medical Expenses	1,40,000/-	2,00,000/-	Enhanced
Transportation and extra nourishment	5,000/-	10,000/-	Enhanced
Attender Charges	-	20,000/-	Granted
Loss of Income	-	18,000/-	Granted
Damages to Clothing	-	1,000/-	Granted
Total compensation	2,00,000/-	3,31,000/-	Enhanced

14. For the foregoing reasons, this Civil Miscellaneous Appeal is partly allowed. No costs.

15. The respondents 1 to 3 are directed to deposit the compensation amount awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 9% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP.No.1087 of 2001 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.1087 of 2001 to the bank account of the claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr/rgi

To

1. The Motor Accidents Claims Tribunal,
Fast Track Court No. III
Additional District and Sessions Judge,
Coimbatore.

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

+1cc to Mr.G.K.Muthukumar, Advocate, S.R.No.47255

+1cc to Mr.K.Vinod, Advocate, S.R.No.46766

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.47014

C.M.A.No. 348 of 2012

SSV(CO)
SU(16/11/2021)