

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.179 of 2016

V. Venkatakrishnan

... Appellant

Versus

1. D. Jhanssi

2. M/s. Reliance General Insurance Co. Ltd.,
" Heavittree" Unit No.1, III Floor,
No.23, Spurt Tank Road,
Chepet, Chennai 600 031.

... Respondents

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acts, 1988 against the judgment and decree made in MCOP No.3486/2009 on the file of III Judge, Small Causes Court at Chennai dated 10th day of June 2015.

For Appellant : Mr.T. G. Balachandran

For Respondents : Mr.S. Arunkumar for R2
R1 - Served - No appearance

JUDGMENT

(Heard through Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 10.06.2015 passed by the Motor Accidents Claims Tribunal, (III Court of Small Causes, Chennai) in MCOP No.3486 of 2009.

2. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal

seeking for enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award to the appellant / claimant are as follows :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	20000
Transport to hospital	5000
Extra nourishment	5000
Damage to clothing	500
Medical expenses	10000
Loss of amenities	5000
Pain and suffering	20000
Disability at 25% at Rs.2,000/- per percentage	50000
Total	1,15,500

4. Heard Mr.T.G. Balachandran, learned counsel for the appellant and Mr.S. Arunkumar, learned counsel for the 2nd respondent. Despite service of notice on the 1st respondent, there is no representation on his side.

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

6. The appellant / claimant sustained the following injuries as a result of an accident caused by a vehicle on 02.10.2009, owned by the first respondent and insured with the second respondent :

1. Volar Barton's Fracture (L)
2. Styloid Process (L) Uina
3. Contusion (R) ankle
4. Multiple injuries all over the body

7. The nature of injuries sustained by the appellant / claimant has not been disputed by the respondents before the Tribunal. The Doctor (PW2), who examined the appellant / claimant has assessed the disability of the appellant / claimant at 35% and the disability certificate was marked as Ex.P9 before the Tribunal. However, the Tribunal has reduced the disability to 25% is without any basis. The Tribunal has not

given due consideration to the year of the accident, which happened in the year 2009. If the same was considered, the Tribunal ought to have granted a higher disability compensation. This Court is of the considered view for the year 2009, just compensation that will have to be fixed for the disability sustained by the appellant / claimant would be Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability, fixed by the Tribunal. Accordingly, this Court enhances the disability compensation of the appellant / claimant from Rs.50,000/- to Rs.1,05,000/-, calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal.

8. The Tribunal has awarded a compensation of Rs.20,000/- towards loss of income to the appellant / claimant, which in the considered view of this Court is low, considering the nature of injuries sustained by the appellant / claimant and his avocation. The appellant / claimant was a Sales and Marketing Executive at the time of the accident. The Tribunal has fixed the monthly income of the appellant / claimant at Rs.13,736/- based on the salary slip, Ex.P5 produced by him before he Tribunal. However, the Tribunal has not given due consideration to the fact that the appellant / claimant would have been unable to do his regular work as a Sales Executive for atleast a period of four months, but instead the Tribunal has erroneously fixed the loss of income of the appellant / claimant on lumpsum basis at Rs.20,000/-. If the appellant / claimant was unable to do his regular work for a period of four months, the loss of income suffered by the appellant / claimant will be Rs.54,944/- (calculated at Rs.13,736/-p.m. for a period of four months), which is rounded off to Rs.54,500/-. Accordingly, this Court assesses the loss of income to the appellant / claimant at Rs.54,500/- instead of Rs.20,000/- fixed by the Tribunal.

9. This Court is also of the considered view that the Tribunal has awarded a lesser compensation towards transportation to hospital, extra nourishment charges and loss of amenities, which have to be necessarily enhanced by this Court in accordance with the settled law. Accordingly, this Court enhances the compensation to the appellant / claimant towards transportation from Rs.5,000/- to Rs.7,500/-, extra nourishment from Rs.5,000/- to Rs.10,000/- and towards loss of amenities from Rs.5,000/- to Rs.15,000/-.

10. However, the Tribunal has failed to give due consideration to the nature of the injuries sustained by the appellant / claimant which will certainly entitles him to get some amount of compensation towards attender charges. Accordingly, this Court assesses the compensation towards attender charges at Rs.10,000/-

11. Insofar as the compensation awarded by the Tribunal towards medical expenses for Rs.10,000/- is concerned is too low and is not a just compensation and therefore, this Court enhances the same to Rs.12,552/-, which are supported by bills (Ex.P4).

12. However, this Court is of the considered view that the compensation awarded by the Tribunal towards pain and suffering and damage to clothing are just compensation and there is no scope for any interference.

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.)
Loss of income	20000	54500
Transport to hospital	5000	7500
Extra nourishment	5000	10000
Damage to clothing	500	500
Medical expenses	10000	12552
Loss of amenities	5000	15000
Pain and suffering	20000	20000
Disability at 25% at Rs.2,000/- per percentage	50000	105000
Attender charges	-	10000
Total	1,15,500	235052

14. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,15,500/- to Rs.2,35,052/-, as indicated above. No costs.

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.3486/2009 on the file of the Motor Accidents Claims Tribunal (III Judge, Small Causes Court at Chennai), 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. Necessary Court fee, if any has to be paid by the appellant before receiving the copy of this Judgment.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Judge,
III Court of Small Causes, Chennai

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

+1cc to M/s.T.G.Balachandran, Advocate, S.R.No.28168

CMA No.179 of 2016

SSV(CO)
SU(23/11/2021)