



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1850 of 2016

Nedunchezian

...Appellant/Petitioner

Vs

1. Anidoll

2. National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai - 02.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 27.11.2014 made in M.C.O.P.No.338 of 2012 On the file of Motor Accident Claims Tribunal, (III Small Causes Court) Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : R1-sd-NA
Mr.J.Michael Visuvasam for R2

J U D G M E N T

This appeal has been filed by the claimant seeking for enhancement of compensation under the impugned Award dated 27.11.2014 passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P.No.338 of 2012.

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

3.Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellant and Mr.J.Michael Visuvasam, learned counsel for the second respondent.

4.The details of the compensation awarded by the Tribunal



under the impugned Award are as follows:

Particulars	Amount (Rs.)
Loss of income	15,000
Transport to hospital	10,000
Extra nourishment	7,000
Damage to clothing	500
Medical expenses	5,768
Loss of amenities	5,000
Pain and suffering	30,000
Disability at 40% at Rs.1,800/- per percentage	72,000
Total	Rs.1,45,268

5.Appellant/claimant is an Auditor in Mars Consultants and in his claim petition, he has pleaded that he was earning Rs.20,000/- per month.

6.The Tribunal has fixed the monthly income of the Appellant/claimant at Rs.15,000/- based on the evidence available on record. Therefore, the said assessment is a correct assessment and there is no scope for interference by this Court.

7.The Appellant/claimant has sustained the following injuries:

(i) Bicondylar fracture left tibia

(ii) for repairing the same, steel plate fixed on the Appellant/claimant through open surgery.

The Appellant/claimant was an inpatient at St.Isabels Hospitals from 18.11.2011 to 08.12.2011 for a period of 20 days. The nature of injuries sustained by the Appellant/claimant as well as the period of hospitalization has not been disputed by the respondents before the Tribunal as seen from the evidence available on record.

8.The Tribunal has assessed the disability of the Appellant/claimant at 40% after giving due consideration to the disability certificate issued by the Doctor who examined the Appellant/claimant (PW2).

9.This Court after giving due consideration to the nature of injuries sustained by the Appellant/claimant is of the



considered view that the assessment of the disability of the Appellant/claimant at 40% even though the Doctor has assessed the disability at 50% is a correct assessment.

10. The Tribunal has awarded a compensation of Rs.15,000/- towards loss of income to the Appellant/claimant at Rs.15,000/- calculated for a period of one month.

11. This Court is of the considered view that in view of the nature of injuries sustained by the Appellant/claimant as indicated above, the Tribunal ought to have awarded a higher compensation towards loss of income to the Appellant/claimant as he would have been unable to do his regular employment as an Auditor for more number of months.

12. This Court is of the considered view that for a period of almost 3 months, the Appellant/claimant would have been unable to do his regular employment as a result of the injuries sustained by him due to the accident. This Court, therefore enhances loss of income fixed by the Tribunal from Rs.15,000/- to Rs.40,000/-.

13. The accident happened in the year 2011. The Tribunal has failed to give due consideration to the year of the accident before fixing the disability compensation. The Tribunal has awarded only a sum of Rs.1,800/- per percentage of disability for an accident that happened in the year 2011 which has to be necessarily enhanced by this Court.

14. After giving due consideration to the year of the accident, this Court enhances the disability compensation from Rs.72,000/- to Rs.1,20,000/- calculated at Rs.3,000/- per percentage of disability for the 40% disability suffered by the Appellant/claimant.

15. The Tribunal has also failed to Award any compensation towards attender charges which he is legally entitled to in view of the nature of the injuries sustained by him and the period of his hospitalization. Accordingly, this Court fixes a sum of Rs.10,000/- towards attender charges.

16. The Tribunal has also awarded a lesser compensation towards extra nourishment charges, damage to clothing and loss of amenities which has to be necessarily enhanced to Rs.10,000/-, Rs.1,000/- and Rs.10,000/- respectively.

17. Insofar as the compensation awarded by the Tribunal under the heads transport to hospital, pain and suffering and medical expenses are concerned, the same is a just compensation and there is no scope for interference.



18. For the foregoing reasons, this Court enhances the compensation awarded by the Tribunal to the Appellant/claimant from Rs.1,45,268/- to Rs.2,36,768/- as detailed hereunder:

Particulars	Award Amount (Rs.)	enhanced Amount
Loss of income	15,000	40,000
Transport to hospital	10,000	10,000
Extra nourishment	7,000	10,000
Damage to clothing	500	1,000
Medical expenses	5,768	5,768
Loss of amenities	5,000	10,000
Pain and suffering	30,000	30,000
Disability at 40% at Rs.1,800/-per percentage	72,000	1,20,000
Total	Rs.1,45,268/-	Rs.2,36,768/-

19. In the result, the appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified amount awarded by this Court together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit after deducting the amount already deposited if any to the credit of MCOP.No.338 of 2012 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.338 of 2012 to the bank account of the Appellant through RTGS within a period of one week thereafter. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

pam

To

1. The Motor Accident Claims Tribunal,
(III Small Causes Court), Chennai.



Copy to:

The Section Officer
V.R.Section, High Court of Madras.

WEB COPY

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.24568

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.24269

C.M.A.No.1850 of 2016

SSV(CO)
SU(14/09/2021)