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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.698 of 2015

M.K.Arumugam

... Appellant/Claimant

..Vs..

1.T.S.Ramesh

2.R.S.Sivakumar

3.United India Insurance Co. Ltd.,
Mettur Road,
Erode.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 17.03.2011 made in MCOP.No.187 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.C.Munusamy
For R-3 : Mrs.I.Malar

R1 & R2 - Exparte

J U D G M E N T

(This Appeal has been taken up for hearing through Video Conferencing)

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 17.03.2011 passed by the Motor Accident Claims Tribunal, Sub Court, Perundurai in MCOP.No.187 of 2009.

2. Heard Mr.C.Munusamy, learned counsel for the Appellant/claimant and Mrs.I.Malar, learned counsel for the third respondent/Insurance Company. The first and second



respondents have remained exparte both before the Tribunal as well as this Court.

3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellant/claimant are as follows :

Heads	Award Amount (Rs.)
Temporary loss of earning	2,500/-
Transport to hospital	1,000/-
Extra Nourishment	1,000/-
Damages to clothing & articles	500/-
Medical expenses	650/-
Pain and Sufferings	1,000/-
Permanent disability and loss of earning power	12,500/-
Total	19,150/-

4. The grievance of the appellant/claimant is that the Tribunal erroneously fixed the monthly income of the appellant/claimant at Rs.2,500/- and has also erroneously reduced the disability as fixed by the doctor at 16% to 8%. It is also the contention of the appellant/claimant that compensation awarded by the Tribunal under various heads are low and it needs to be enhanced. The appellant/claimant has sustained head injuries which has not been disputed by the third respondent/Insurance company before the Tribunal.

5. Before the Tribunal, the appellant/claimant has filed twelve documents which were marked as Exs.P1 to P12 and three witnesses were examined on their side which include the doctor who examined him as PW3. The documents filed by the appellant/claimant which were marked as exhibits before the Tribunal include (a) Medical treatment book, (b) X-rays, (c) Medical receipts and (d) disability certificate, which would reveal that the appellant/claimant has sustained head injuries. The disability certificate Ex.P10 issued by the doctor who has examined the appellant/claimant and who had also been examined as witness before the Tribunal as PW3 has assessed the disability of the appellant/claimant at 16%. However, the Tribunal, without any basis, only on the ground that the appellant/claimant did not suffer any fracture and was



just having only contusion, reduced the disability to 8% from 16% assessed by the doctor. The appellant/claimant, having sustained head injuries, as seen from the documents filed as exhibits which includes the medical treatment book, this Court is of the considered view that the reduction of disability from 16% to 8% by the Tribunal is without any basis and has to be set aside by this Court. Unless and until there is clinching evidence to show that the assessment of disability by the doctor is not a correct assessment, the Tribunal ought not to have reduced the disability. Hence, this Court accepts the disability certificate which was marked as Ex.P10 before the Tribunal issued by the doctor (PW3) and accordingly fixes the disability of the appellant/claimant at 16% instead of 8% fixed by the Tribunal.

6. In the claim petition, the appellant/claimant has pleaded that he was earning Rs.3000/- per month at the time of accident as a watchman. The accident happened in the year 2009. However, the Tribunal has fixed the notional monthly income of the appellant/claimant only at Rs.2500/-. This Court is of the considered view that the Tribunal ought not to have reduced the monthly income of the appellant/claimant to Rs.2500/- when the claim of the appellant/claimant as per his own pleading found in the claim petition was only Rs.3000/- per month. Accordingly, this Court fixes the notional monthly income of the appellant/claimant at Rs.3000/- instead of Rs.2500/- fixed by the Tribunal. The Tribunal has also awarded a meagre compensation towards (a) Loss of earning during the period of appellant/claimant's treatment (b) transport charges (c) extra nourishment and (d) compensation for pain & sufferings. This Court is of the considered view that the Tribunal has not taken into consideration the nature of injuries sustained by the appellant/claimant as well as the year of the accident before assessing the compensation under the afore mentioned heads.

7. Having sustained head injuries which requires medical treatment, this Court is of the considered view that atleast for a period of two months, the appellant / claimant would have been unable to do his regular work. Therefore, the compensation for temporary loss of earning fixed by the Tribunal at Rs.2500/- calculated for a period of one month will have to be enhanced to Rs.6,000/- calculated for a period of two months @ Rs.3000/- per month. Similarly, the compensation to the appellant/claimant towards transportation and extra nourishment will have to be enhanced from Rs.1000/- each, as fixed by the Tribunal to Rs.2500/- each by this Court, totally amounting to Rs.5000/- .



8. With regard to the compensation awarded by the Tribunal towards pain & sufferings at Rs.1000/- is concerned, the same is also low in the considered view of this Court and it is enhanced to Rs.2500/-. With regard to the permanent disability compensation awarded by the Tribunal at Rs.12,500/- is concerned, the same is enhanced to Rs.32,000/- calculated for 16% disability, as assessed by the doctor @ Rs.2000/- per percentage of disability. The compensation awarded by the Tribunal towards damages to clothing & articles and medical expenses are confirmed by this Court.

9. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.19,150/- to Rs.46,650/- by this Court, in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Temporary loss of earning	2,500/-	6,000/-
Transport to hospital	1,000/-	2,500/-
Extra Nourishment	1,000/-	2,500/-
Damages to clothing & articles	500/-	500/-
Medical expenses	650/-	650/-
Pain and Sufferings	1,000/-	2,500/-
Permanent disability and loss of earning power	12,500/-	32,000/-
Total	19,150/-	46,650/-

Conclusion:

9. In the result, this appeal shall stand partly allowed. The Third Respondent / Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.46,650/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited to the credit of MCOP.No.187 of 2009 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 to the bank account of the



appellant/claimant through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellant/Claimant before receiving the copy of this Judgment. No costs.

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Sd/-
Deputy Registrar(Lok Adalat)

//True copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai.
2. The Section Officer
V.R.Section, High Court,
Madras.

C.M.A.No.698 of 2015

LN(CO)
GMY(19/11/2021)