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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.195 of 2016

C.Vigneswaran

... Appellant/Petitioner

Vs

1.S.Ganesan

2.The Branch Manager,
United Insurance Company Limited,
Motor Third Party Claims Office,
Silingi Buildings, 4th Floor,
134, Greams Road,
Chennai - 600 006.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 30.06.2015 in MCOP.No.2985 of 2013 passed by the Motor Accident Claims Tribunal (III Judge, Small Causes Court), Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondent 2 : Mr.M.Krishnamoorthy

JUDGMENT

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 30.06.2015 passed by the Motor Accident Claims Tribunal (IIIrd Court of Small Causes), Chennai in MCOP.No.2985 of 2013.

2. Heard Mr.R.Nalliyappan, learned counsel for the Appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent. Since no adverse orders are going to be passed against the first respondent, notice to the first respondent is dispensed with by this Court.

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



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Heads	Award Amount (Rs.)
Transport to Hospital	1,000/-
Extra nourishment	1,000/-
Medical Expenses	5,710/-
Pain and suffering	10,000/-
Loss of earning	5,000/-
Disability	30,000/- (2000 x 15%)
Total	52,710/-

4. In the claim petition, the Appellant/claimant has pleaded that he has sustained the following injuries as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent viz., (a) fracture over right wrist, (b) Fracture over left shoulder and elbow, (c) Abrasions over left leg and (d) multiple injuries all over the body.

5. Before the Tribunal, the Appellant/claimant has filed eight documents which were marked as Ex.P1 to Ex.P8 and two witnesses were examined namely, the Appellant/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the respondents, neither any document was filed nor any witness examined, before the Tribunal.

6. However, before the Tribunal, excepting for filing of O.P.Chit issued by the Government Hospital on 13.05.2013 which has been marked as Ex.P3, no other document has been filed to prove that the Appellant/claimant had sustained injuries mentioned in the claim petition. O.P. chit does not disclose the injuries that the Appellant/claimant is said to have sustained as a result of the accident. The Tribunal after taking into consideration the documents filed by the Appellant/claimant and after taking note of the fact that he has not taken treatment as an in-patient for the injuries sustained by him has fixed the disability of the Appellant/claimant at 15%, eventhough the Doctor who has alleged to have examined the Appellant/claimant has assessed the disability of the Appellant/claimant at 40%. The Tribunal has also observed under the impugned award that no evidence has been produced by the Appellant/claimant with regard to his follow up treatment. The Doctor PW2 has also admitted, during his cross-examination that the Appellant/claimant has not underwent any surgery. Therefore this Court is of the considered view that the Tribunal has rightly not accepted the disability certificate Ex.P7 issued by the Doctor (PW2) for the purpose of assessment of Appellant's/ claimant's disability. The Tribunal



has assessed the disability of the Appellant/claimant at 15% which in the considered view of this court is marginally low and it has to be enhanced to 20% in view of the claim made by the Appellant/claimant that he has been taking treatment at Puthur for which medical records are not available. Accordingly, the disability of the Appellant/claimant is fixed by this Court at 20% instead of 15% fixed by the Tribunal.

7. The accident happened in the year 2013. For an accident of the year 2013, it is settled practice of Courts to fix the disability compensation calculated at Rs.3,000/- per percentage of disability. However, the Tribunal under the impugned Award calculated the disability compensation at Rs.2,000/- per percentage of disability. Accordingly, this Court enhances the disability compensation fixed by the Tribunal from Rs.30,000/- calculated at Rs.2,000/- per percentage of disability for the 15% disability to Rs.60,000/- calculated at Rs.3,000/- per percentage of disability for 20% disability assessed by this Court.

8. The Tribunal has awarded a compensation of Rs.1,000/- towards transportation to hospital and another sum of Rs.1,000/- towards extra nourishment which in the considered view of this court is too low and accordingly, this court enhances the same to Rs.2,000/- under each of the said heads.

9. With regard to the compensation of Rs.5,710/- towards medical expenses is concerned, the same is accepted by this Court as it is supported by the bills submitted by the Appellant/claimant.

10. With regard to the compensation of Rs.10,000/- towards pain and suffering and another sum of Rs.5,000/- towards loss of earnings are concerned, the same is a just compensation and does not call for any interference and it is confirmed.

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.52,710/- to Rs.84,710/- as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Transport to Hospital	1,000/-	2,000/-
Extra nourishment	1,000/-	2,000/-
Medical Expenses	5,710/-	5,710/-
Pain and suffering	10,000/-	10,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning	5,000/-	5,000/-
Disability	30,000/- (2000 x 15%)	60,000/- (3,000 x 20%)
Total	52,710/-	84,710/-

Conclusion:

12. In the result, the appeal is partly allowed. The second respondent Insurance company is directed to deposit the compensation awarded by this Court i.e, Rs.84,710/-, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP.No.2985 of 2013 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.2985 of 2013 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

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

Copy to:

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

C.M.A.No.195 of 2016

AJS (CO)
GMV (31/08/2021)