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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1997 OF 2016

Ulaganathan

... Appellant/Petitioner

.Vs.

1. K.Senapathy

2. The New India Assurance Co. Ltd.,
No.231, T.T.K. Road,
Alwarpet,
Chennai - 18.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 06.07.2011, passed in M.C.O.P.No.2043 of 2008 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mrs.Ramya V. Rao

For R-2 : Mr.J.Chandran

R1 : Not Residing at Present

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 06.07.2011 passed by the Motor Accident Claims Tribunal, 4th Small Causes Court, Chennai in MCOP No.2043 of 2008.



2. Heard Mrs.Ramya V. Rao, learned counsel for the Appellant/Claimant and Mr.J.Chandran, learned counsel for the Second respondent/Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

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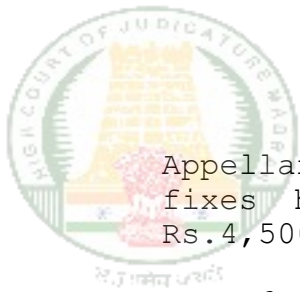
3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellant/Claimant are as follows :

Heads	Award Amount (Rs.)
Loss of income	22,500/-
Transport to hospital	5,000/-
Extra Nourishment	7,000/-
Medical expenses	3,000/-
Future Medical expenses	30,000/-
Attender charges	5,000/-
Pain & Sufferings	35,000/-
Continuing permanent disability	90,000/-
Total	1,97,500/-

4. The Appellant/Claimant sustained the following injuries as a result of an accident which happened on 22.05.2008 caused by a vehicle owned by the first respondent and insured with the Second Respondent/Insurance Company.

- (i) Fracture of both bone leg
- (ii) Fracture of left elbow
- (iii) Fracture of right wrist and multiple injuries all over the body

5. The Appellant/Claimant was an Auto driver and in his claim petition, he had pleaded that he was aged 35 years and was earning Rs.200/- per day. The Tribunal has fixed his monthly income at Rs.4,500/-. The accident having happened in the year 2011, this Court is of the considered view that the assessment of notional monthly income of the Appellant/Claimant fixed by the Tribunal at Rs.4,500/- is low and it has to be enhanced. This Court, after giving due consideration to the fact that the



Appellant/Claimant is an Auto driver and was aged 35 years, fixes his notional monthly income at Rs.6,500/- instead of Rs.4,500/- fixed by the Tribunal.

6. Before the Tribunal, the Appellant/Claimant has filed the disability certificate issued by the doctor (PW2) who examined him, as Ex.P10. As per the disability certificate, the doctor assessed the disability of the Appellant/Claimant at 45% and the Tribunal has awarded the disability compensation of Rs.90,000/- to the Appellant/Claimant, calculated at Rs.2,000/- per percentage of disability, which in the considered view of this Court is a correct assessment. However, the Tribunal has assessed the loss of income to the Appellant/Claimant at Rs.22,500/-, calculated for a period of five months at Rs.4,500/- per month which is not a correct assessment, in the considered view of this Court. Being an Auto driver, as observed earlier, he would have earned a minimum of Rs.6,500/- per month in the year 2011 and if the nature of injuries which includes three fractures were duly considered by the Tribunal, the Appellant/Claimant would have been unable to do his regular work as an Auto driver for atleast a period of six months. Since the notional monthly income of the Appellant/Claimant is enhanced to Rs.6,500/- by this Court, the loss of income payable to the Appellant/Claimant for a period of six months is Rs.39,000/-, calculated at Rs.6,500/- per month instead of Rs.22,500/- awarded by the Tribunal.

7. With regard to the compensation awarded by the Tribunal under various other heads are concerned, this Court is of the considered view that some enhancement needs to be given to the Appellant/Claimant. After giving due consideration to the avocation and nature of injuries sustained by the Appellant/Claimant, this Court enhances the compensation towards transportation from Rs.5,000/- to Rs.10,000/-, towards extra nourishment from Rs.7,000/- to Rs.10,000/- and towards Attender charges from Rs.5,000/- to Rs.10,000/-. The Tribunal has also erroneously failed to award any compensation towards loss of amenities which the Appellant/Claimant is legally entitled to. This Court fixes the compensation towards loss of amenities to the Appellant/Claimant at Rs.10,000/-. With regard to the compensation awarded by the Tribunal towards Pain & Sufferings at Rs.35,000/-, Future Medical expenses at Rs.30,000/- and Rs.3,000/- towards Medical expenses are concerned, this Court is of the considered view that the same is a just compensation and does not call for any interference and the same is confirmed.

8. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,97,500/- to Rs.2,37,000/- by this Court, in the following manner:



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	22,500/-	39,000/-
Transport to hospital	5,000/-	10,000/-
Extra Nourishment	7,000/-	10,000/-
Medical expenses	3,000/-	3,000/-
Future Medical expenses	30,000/-	30,000/-
Attender charges	5,000/-	10,000/-
Pain & Sufferings	35,000/-	35,000/-
Continuing permanent disability	90,000/-	90,000/-
Loss of amenities	-	10,000/-
Total	1,97,500/-	2,37,000/-

Conclusion:

9. In the result, this appeal shall stand partly allowed. The Second Respondent/Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.2,37,000/- together with interest at the rate of 7.5% per annum (excluding Rs.30,000/- towards future medical expenses) from the date of claim till the date of deposit and costs, after deducting the amount already deposited to the credit of MCOP.No.2043 of 2008 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgr



To

The IV Judge,
The Small Causes Court,
The Motor Accidents Claims Tribunal,
Chennai.

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+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.31917
+1cc to Mr.J.Chandran, Advocate, S.R.No.32041

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CP(CO)
PBS/23/11/2021