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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA NO.2253 OF 2016

Sampantha Moorthy

...Appellant/Claimant

versus

1. Mary Rani
2. The Oriental Insurance Co. Ltd.,
No.8, Explanade Road,
LIC Building,
3rd Floor,
Chennai - 108.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.05.2008 and made in M.A.C.T.O.P. No.606 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar
For Respondents : Mr.K.Vinod for R2
R1 - Exparte

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 30.05.2008 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, Chennai in MCOP No.606 of 2003.



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

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3. The details of the compensation awarded by the Tribunal under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss	
Medical expenses under Ex.P2 and P4	940/-
Transport to hospital	1,000/-
Extra nourishment	1,000/-
Non pecuniary loss	
Pain and sufferings	5,000/-
Loss of amenities in life	2,000/-
Permanent disablement of earning power 40%	40,000/-
Total	49,940/-

4. Heard Ms. A. Subadra, representing counsel for Ms.M.Malar, learned counsel on record for the appellant / claimant and Mr.K.Vinod, learned counsel for the second respondent / Insurance Company. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The appellant / claimant was a lorry Driver aged 33 years and he sustained both bone fracture of his left leg. He was also hospitalised from 04.08.2002 to 17.08.2002 and the discharge summary issued by the hospital has also been marked as Ex.P1 before the Tribunal. The Doctor (PW2), who examined him has assessed his disability at 40%. The Tribunal after giving due consideration to the nature of injuries sustained by the appellant / claimant has fixed the percentage of disability at



40%, which is a correct assessment. The Tribunal has awarded a disability compensation of Rs.40,000/- calculated at Rs.1,000/- per percentage of disability to the appellant / claimant, since the accident happened in the year 2002, the said assessment made by the Tribunal is a correct assessment and the same is confirmed by this Court.

7. The Tribunal has not awarded any compensation towards loss of income during the period of appellant's /claimant's treatment. As seen from the evidence available on record, the loss of income ought to have been awarded by the Tribunal. After giving due consideration to the nature of the injuries sustained by the appellant / claimant as well as the medical records including the discharge summary, which was marked as Ex.P1 before the Tribunal, this Court is of the considered view that atleast for a period of 10 months, the appellant / claimant would have been unable to perform his regular work as a Driver. Since, the accident happened in the year 2002, after giving due consideration to the avocation of the appellant / claimant, the notional monthly income of the appellant / claimant at the time of the accident is fixed by this Court at Rs.3,000/-. Therefore, the loss of income payable to the appellant / claimant during the period of his treatment is Rs.30,000/-, calculated at Rs.3,000/-p.m., for a period of 10 months.

8. The Tribunal has also erroneously failed to award any compensation towards attender charges, which the appellant / claimant is legally entitled to as per the settled practice. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant awards a compensation of Rs.5,000/- towards attender charges to the appellant / claimant.

9. Insofar as the compensation awarded by the Tribunal towards medical expenses at Rs.940/- is concerned, the same is supported by medical bills produced by the appellant / claimant before the Tribunal and therefore, it is confirmed by this Court.

10. However, the compensation awarded by the Tribunal towards extra nourishment, transportation, pain and suffering and loss of amenities is on the lower side and it has to be enhanced. This Court after giving due consideration to the



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nature of injuries sustained by the appellant / claimant enhances the compensation towards extra nourishment, transportation, pain and suffering and loss of amenities to Rs.5,000/-, Rs.5,000/-, Rs.15,000/- and Rs.5,000/- respectively.

11. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss		
Medical expenses under Ex.P2 and P4	940/-	940/-
Transport to hospital	1,000/-	5,000/-
Extra nourishment	1,000/-	5,000/-
Non pecuniary loss		
Pain and sufferings	5,000/-	15,000/-
Loss of amenities in life	2,000/-	5,000/-
Permanent disablement of earning power 40%	40,000/-	40,000/-
Loss of income (3000 x 10)	-	30,000/-
Attender charges	-	5,000/-
Total	49,940/-	1,05,940/-

12. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.49,940/- to Rs.1,05,940/-, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

13. There is a delay of 1202 days in filing the appeal, which was earlier condoned by this Court. It is made clear that the appellant / claimant is not entitled to get any interest for the said delay period of 1202 days.

14. 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 delay period of 1202 days less the amount, if any, already deposited to the credit of M.A.C.T.O.P. No.606 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.III, 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 / claimant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

vs12

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.III,
Chennai.
2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

+1cc to M/s.M.Malar, Advocate, S.R.No.33605

+1cc to M/s.Elveera Ravindran, Advocate, S.R.No.33452

CMA No.2253 of 2016

NMI(CO)
RLP(23/11/2021)