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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2405 of 2016

M.Ganeshan

...Appellant/Petitioner

Vs

1.N.Chinnadurai

(1st respondent remained ex-parte)

2.The New India Assurance Co.Ltd.,

No.92, G.N.Chetty Road,

'Mezzanine Floor' East Cost Chambers,

T.Nagar, Chennai - 600 017.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 28.06.2016 made in MACT.OP.No.2341 of 2008, on the file of the Special Sub Judge II, (Motor Accident Claims Tribunal), Small Causes Court, Chennai.

For Appellant : Mr.R.Kalaiarasan

For Respondents : R1 - Exparte
Mr.M.Krishnamoorthy for R2

J U D G M E N T

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking for enhancement of compensation under the impugned Award dated 28.06.2016 passed by the Motor Accident Claims Tribunal, Special Sub Judge - II, Small Causes Court, Chennai in M.C.O.P.No.2341 of 2008.

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



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3.The details of the compensation awarded to the Appellant/claimant by the Tribunal under the impugned Award are as follows:

Head	Amount awarded by the Tribunal
Loss of earning	Rs.44,000 (Rs.11,000 x 4 months)
Transport to hospital	Rs.5,000
Extra nourishment	Rs.25,000
Damage to clothing and articles	Rs.2,000
Private medical expenses	Rs.6,24,570
Compensation for attendants	Rs.25,000
Mental agony due to immobilization	Rs.25,000
Loss of amenities	Rs.25,000
Pain and suffering	Rs.40,000
Permanent disability	Rs.2,25,000
Total	Rs.10,40,570/-

4.Heard Mr.R.Kalaiarasan, learned counsel for the Appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

5.The Appellant/claimant has sustained the following injuries on 07.03.2008 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent:

- (a) Head injury - Left temporal fracture
- (b) Fracture parietal bone
- (c) Bi-lateal temporo - parietal sub-dural hematoma and sub-dural leak
- (d) Subrachnoid hemorrhage
- (e) Right side temporal injury
- (f) Internal bleeding in head (tentorial bleed)
- (g) Fracture both bones right fore-arm
- (h) Internal injury in abdomen
- (i) Multiple injuries all over his body.



6.The Doctor who examined the Appellant/claimant has assessed 60% disability in respect of head injury and 30% disability in respect of ortho injury and in all the total disability was assessed by the Doctor at 90%. However, the Tribunal assessed the disability of the Appellant/claimant at 75% and has awarded a disability compensation of Rs.2,25,000/- to the Appellant/claimant calculated at Rs.3,000/- per percentage of disability. The nature of injuries sustained by the Appellant/claimant has not been disputed by the respondents before the Tribunal.

7.This Court has perused and examined the impugned Award as well as materials and evidence available on record before the Tribunal.

8.Considering the nature of injuries sustained by the Appellant/claimant as indicated supra, this Court is of the considered view that the assessment of disability of the Appellant/claimant at 75% by the Tribunal is a correct assessment and the disability compensation fixed at Rs.2,25,000/- by the Tribunal is also a correct assessment.

9.The Appellant/claimant was hospitalized at Vijaya Health Centre between 07.03.2008 and 20.05.2008 for a period of 74 days. The Appellant/claimant has filed discharge summary issued by the Hospital which has been marked as Ex.P4 and the period of hospitalization of the Appellant/claimant has also not been disputed by the respondents before the Tribunal as seen from the evidence available on record.

10.The Appellant/claimant was a partner in a Newspaper selling concern.

11.The Tribunal has fixed loss of earning to the Appellant/claimant at Rs.44,000/- calculated at Rs.11,000/- per month for a period of 4 months. This Court is of the considered view that the Tribunal has not taken into consideration nature of injuries sustained by the Appellant/claimant which are grievous in nature and has also not taken into consideration long period of hospitalization before assessing the loss of earning of the Appellant/claimant for a period of 4 months. This Court is of the considered view that for atleast a period of 10 months, the Appellant/claimant would have been unable to do his regular work as a Newspaper distributor.

12.Even though the Appellant/claimant has filed documentary evidence to show that he was earning between



Rs.10,000/- and Rs.15,000/- at the time of the accident, the Tribunal has fixed the notional monthly income of the Appellant/claimant at Rs.11,000/-. This Court is of the considered view that being a Newspaper distributor, the Tribunal ought to have fixed monthly income of the Appellant/claimant at a higher sum.

13.Considering the fact that the year of the accident is 2008, this Court therefore fixes notional monthly income of the Appellant/claimant at Rs.12,000/-. Therefore, compensation towards loss of earning to the Appellant/claimant is enhanced to Rs.1,20,000/- calculated at Rs.12,000/-per month for a period of 10 months instead of Rs.44,000/- fixed by the Tribunal calculated at Rs.11,000/- per month for a period of 4 months.

14.The compensation awarded by the Tribunal under the heads (a) Transport to hospital and (b) Pain and suffering will have to be enhanced in view of the grievous injuries and the fractures sustained by the Appellant/claimant. Accordingly, this Court enhances the compensation towards Transport to hospital from Rs.5,000/- to Rs.15,000/- and towards Pain and suffering from Rs.40,000/- to Rs.50,000/-.

15.Insofar as the compensation awarded by the Tribunal under various other heads are concerned, the same is a just compensation and there is no scope for interference.

16.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is enhanced to Rs.11,61,570/- from Rs.10,40,570/- by this Court as detailed hereunder:

Head	Amount awarded by the Tribunal	Modified/enhanced by this Court
Loss of earning	Rs.44,000 (Rs.11,000 x 4 months)	Rs.1,20,000 (Rs.12,000 x 10 months)
Transport to hospital	Rs.5,000	Rs.15,000
Extra nourishment	Rs.25,000	Rs.25,000
Damage to clothing and articles	Rs.2,000	Rs.2,000
Private medical expenses	Rs.6,24,570	Rs.6,24,570



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Head	Amount awarded by the Tribunal	Modified/enhanced by this Court
Compensation for attendants	Rs.25,000	Rs.25,000
Mental agony due to immobilization	Rs.25,000	Rs.25,000
Loss of amenities	Rs.25,000	Rs.50,000
Pain and suffering	Rs.40,000	Rs.50,000
Permanent disability	Rs.2,25,000	Rs.2,25,000
Total	Rs.10,40,570/-	Rs.11,61,570/-

17. In the result, the appeal is partly allowed. The Second respondent is directed to deposit the modified award amount of Rs.11,61,570/- as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization excluding the period between 12.09.2011 and 29.10.2011, less the amount, if any, already deposited to the credit of M.C.O.P.No.2341 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Judge - II, Small Causes Court, 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. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment. No costs.

Sd/-

Deputy Registrar

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Sub Assistant Registrar

pam

To

1. The Motor Accident Claims Tribunal,
Special Sub Judge - II, Small Causes Court, Chennai.



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

+1cc to Mr.N.M.Muthurajan, Advocate SR.No.30644

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.31122

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NRL (CO)
CB (23/11/2021)