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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.301 OF 2016

Minor Logeswaran

Represented by his next Friend

Guardian Father Jayavel

...Appellant

versus

1.Jayagopal

(Notice to R1 may be dispensed with
set ex parte before the Tribunal)

2.National Insurance Co., Ltd.,
Branch No.3,
Thanthai Periyar Market Complex,
Govindasamy Pillai Street,
Old Bus Stand, Salem.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree in MCOP No.368 of 2009, dated 23.12.2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.T.S.Arathanareswaran
for Mr.C. Paraneedharan

For Respondents : Mr.D. Bhaskaran for R2
R1 - Exparte

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 23.12.2011 passed by the Motor Accident Claims Tribunal, Sub Court, Sankari in MCOP No.368 of 2009.



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2. The Tribunal under the impugned award directed the respondents to pay the appellant / claimant a compensation of Rs.1,77,500/- together with interests and costs as detailed below :-

Heads	Amount awarded by the Tribunal (Rs.)
Disability	56,000/-
Medical expenses	24,500/-
Pain and sufferings	25,000/-
Extra nourishment	20,000/-
Attender charges	5,000/-
Conveyance expenses	5,000/-
Loss of amenities	5,000/-
Future medical expenses	10,000/-
Loss of income to claimants father	27,000/-
Total	1,77,500/-

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

4. Heard Mr.T.S.Arathanareswaran, learned counsel for the appellant and Mr.D. Bhaskaran, learned counsel for the 2nd respondent. R1 remained 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 has sustained grievous injuries on his left thigh, knee and leg and injuries all over the body as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent.

7. The Doctor (PW2), who has examined the appellant / claimant has assessed his disability at 32%. However, the Tribunal under the impugned award without any basis has reduced



the disability to 20%. After giving due consideration to the nature of injuries sustained by the appellant / claimant, this Court is of the considered view that the assessment made by the Doctor with regard to the appellant / claimant's disability ought not to have been rejected by the Tribunal. Therefore, this Court fixes the disability of the appellant / claimant at 32% as assessed by the Doctor. The Tribunal has awarded a compensation of Rs.56,000/- towards disability compensation to the appellant / claimant, calculated at Rs.2,000/- per percentage of disability for the 28% disability assessed by the Tribunal, which has to be necessarily enhanced, since the Tribunal has not taken into consideration the year of the accident and the actual disability suffered by the appellant / claimant. Hence, this Court has fixed the disability compensation of the appellant / claimant at 32% and after giving due consideration to the year of the accident which happened in the year 2009, enhances the same to Rs.96000/- calculated at Rs.3000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal. Thus, the compensation awarded under the head disability to the appellant / claimant is enhanced to Rs.96,000/- (32% x Rs.3,000/-).

8. The Tribunal has awarded a compensation of Rs.24,500/- towards medical expenses, which is supported by bills; Rs.25,000/- towards pain and suffering; Rs.20,000/- towards extra nourishment; Rs.5,000/- towards attender charges; Rs.5,000/- towards conveyance expenses and Rs.10,000/- towards future medical expenses and Rs.27,000/- towards loss of income to the appellant / claimant's father which in the considered view of this Court is a just compensation and there is no scope for any interference.

9. However, the Tribunal has awarded a lesser compensation of Rs.5,000/- to the appellant / claimant towards loss of amenities which has to be necessarily enhanced. After giving due consideration to the nature of injuries sustained by the appellant / claimant and the period of his hospitalisation, this Court fixes the compensation towards loss of amenities at Rs.35,000/- instead of Rs.5,000/- fixed by the Tribunal.

10. The Tribunal has also erroneously failed to award any compensation towards damage to clothing and this Court awards a



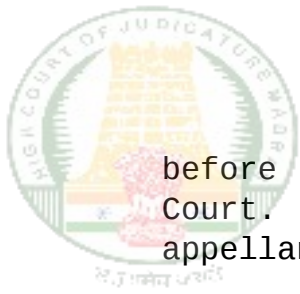
compensation of Rs.2,500/- to the appellant / claimant towards the same.

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

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Disability	56,000/-	96,000/-
Medical expenses	24,500/-	24,500/-
Pain and sufferings	25,000/-	25,000/-
Extra nourishment	20,000/-	20,000/-
Attender charges	5,000/-	5,000/-
Conveyance expenses	5,000/-	5,000/-
Loss of amenities	5,000/-	35,000/-
Future medical expenses	10,000/-	10,000/-
Loss of income to claimant's father	27,000/-	27,000/-
Damages	-	2,500/-
Total	1,77,500/-	2,50,000/-

12. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,77,500/- to Rs.2,50,000/- as indicated above. No costs.

13. 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 amount, if any, already deposited to the credit of MCOP No.368 of 2009, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari, within a period of four weeks from the date of receipt of a copy of this Judgment. Since the appellant is minor, the Tribunal is directed to deposit the award amount in interest bearing fixed deposit in any one of the Nationalised Banks, till he attains the age of majority. If the minor appellant has attained the age of majority, it is open for him to file a formal petition



before the Tribunal to get the award amount assessed by this Court. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

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Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

vsi2

To :

The Sub Judge,
Motor Accidents Claims Tribunal,
Sub Court, Sankari.

C.M.A.No.301 of 2016

AK-II(CO)
RVM(09/11/2021)