



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.2718 of 2016

1. M.Subramaniam

...Appellant/Petitioner

Versus

1. P. Shanthi

2. The New India Assurance Company Ltd.,
1st Floor, Amman Complex,
1360, Erode.

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acts, 1988 to enhance the compensation awarded in the judgment and decree dated 12.02.2013 made in MCOP No.120 of 2010 on the file of MACT / Sub Court at Namakkal, with interest and cost by allowing this Civil Miscellaneous Appeal.

For Appellant

: Mr.Lokesh

for M/s.Ma.P.Thangavel

For Respondents

: Mr.K. Padmanabhan for R2

R1 - Exparte

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 12.02.2013 passed by the Motor Accidents Claims Tribunal, Sub Court, Namakkal in MCOP No.120 of 2010.

2. The appellant / claimant had sustained injuries on 22.12.2009 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accidents Claims Tribunal, Sub Court, Namakkal and the Tribunal under the impugned award directed the respondents to pay the appellant / claimant, a compensation of Rs.3,02,100/- together with interests and costs as detailed hereunder :-



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Heads	Amount awarded by the Tribunal (Rs.)
Permanent disability (25% x Rs.2,000/- each percentage)	50000
Medical Bills (Ex.P5)	2,14,100
Pain and suffering	15000
Extra nourishment	5000
Transport expenses	3000
Loss of earnings (Rs.5,000/- x 3 months)	15000
Total	4,53,896/-

3. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking for enhancement.

4. Heard Mr.Lokesh, learned counsel for the appellant and Mr.K.Padmanabhan, learned counsel for the second respondent / Insurance Company. The first respondent was set ex parte before the Tribunal, hence notice to the first respondent is dispensed with.

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

6. The appellant / claimant, claims to be an Agriculturist, aged 53 years and in his claim petition, he has pleaded that he was earning Rs.6,000/- p.m. at the time of the accident. However, the Tribunal has fixed his notional monthly income at Rs.5,000/-. The appellant / claimant had sustained Crush injuries in his left leg as a result of the accident.

7. The Doctor (PW2), who examined the appellant / claimant has assessed his partial and permanent disability at 40% and the disability certificate was marked as Ex.P9 before the Tribunal. He was hospitalised for the first spell from 21.12.2009 to 27.01.2010 and underwent three surgeries on 21.12.2009, 23.12.2009 and 29.12.2009 and was an inpatient for 37 days, as per Ex.P6, the discharge summary issued by the hospital. The appellant / claimant was hospitalised for the second spell from 14.07.2011 to 24.07.2011 and he underwent one surgery on 14.07.2011 and he was an inpatient for 10 days as



seen from Ex.P7, the discharge summary issued by the hospital. Even though the Doctor has assessed the disability of the appellant / claimant at 40%, the Tribunal reduced the same to 25% without any basis.

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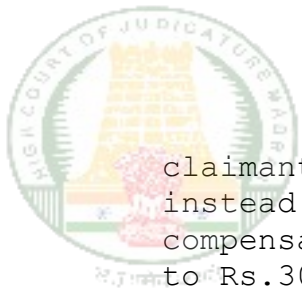
8. After giving due consideration to the nature of the injuries sustained by the appellant / claimant as detailed supra, this Court is of the considered view that the Tribunal ought not to have reduced the disability from 40% to 25%. Therefore, this Court fixes the disability of the appellant / claimant at 40% as assessed by the Doctor (PW2). The Tribunal has awarded a compensation of Rs.50,000/- towards the disability suffered by the appellant / claimant, calculated at Rs.2,000/- per percentage for the 25% disability fixed by the Tribunal. Since this Court enhances the disability of the appellant / claimant to 40% and is also enhancing the compensation from Rs.2,000/- to Rs.3,000/- per percentage of disability, this Court enhances the disability compensation payable to the appellant / claimant to Rs.1,20,000/- (Rs.3,000/- x 40%) instead of Rs.50,000/- fixed by the Tribunal.

9. The Tribunal has awarded a compensation of Rs.2,14,400/- towards medical bills as per the medical bills submitted by the appellant / claimant which were marked as Ex.P5 and the same is confirmed by this Court.

10. Insofar as the compensation awarded by the Tribunal towards pain and suffering, extra nourishment, the Transportation expenses are concerned, the same will have to be enhanced. Accordingly, this Court enhances the same to Rs.20,000/-, Rs.15,000/- and Rs.10,000/- respectively.

11. The accident happened in the year 2009. For the purpose of calculating loss of earnings to the appellant / claimant, the Tribunal has fixed the notional monthly income of the appellant / claimant at Rs.5,000/- which in the considered view of this Court is low and it has to be enhanced to Rs.6,000/-.

12. The Tribunal has also calculated loss of earnings to the appellant / claimant only for a period of three months. As indicated above, the appellant / claimant has sustained grievous injuries and was also hospitalised for a long period of time. Therefore, at least for a period of five months, the appellant / claimant would have been unable to do his regular work as an Agriculturist. Hence, this Court is of the considered view that the loss of earnings to the appellant /



claimant will have to be calculated for a period of five months, instead of three months fixed by the Tribunal. Accordingly, the compensation towards loss of earning is enhanced to Rs.15,000/- to Rs.30,000/-.

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13. Despite the fact that the appellant / claimant has sustained grievous injuries and was hospitalised for a long period of time, the Tribunal failed to award compensation to him towards attender charges and loss of amenities, which he is legally entitled to as per the settled law. Accordingly, this Court awards a compensation of Rs.20,000/- towards attender charges and Rs.10,000/- towards loss of amenities.

14. 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 *25% x Rs.2,000/- #40% x Rs.3,000/-	50000 *	1,20,000 #
Medical Bills (Ex.P5)	2,14,100	2,14,100
Pain and suffering	15000	20000
Extra nourishment	5000	15000
Transport expenses	3000	10000
Loss of earnings **(Rs.5,000/- x 3 months) ## (Rs.6,000/- x 5 months)	15000 **	30000 ##
Attender charges	-	20000
Loss of amenities	-	10000
Total	3,02,100	4,39,100

15. However, the learned counsel for the second respondent / Insurance Company vehemently opposes for the aforesaid enhancement, which is rejected by this Court for the foregoing reasons.

16. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.3,02,100/- to Rs.4,39,100/-, as indicated above. No costs.



17. 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.120 of 2010 on the file of the Motor Accidents Claims Tribunal (Sub Court at Namakkal), 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 before receiving the copy of this Judgment.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

vs12

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sub Court at Namakkal.

2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 27772.

CMA No.2718 of 2016

VGII(CO)
SP(08/12/2021)