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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.699 of 2016

P.Agni

...Appellant/Petitioner

Vs

1.M.Ponnusamy

2.The ICICI Lombard General Insurance Co. Ltd.,
No.34 & 35, Nungambakkam High Road, III-Floor,
Chennai - 34

...Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree made in MCOP.No.4208 of 2011 dated 07.02.2013 on the file of the V-Small Cause Judge, Chennai-Motor Accident Claims Tribunal, Chennai.

For Appellant	: Mr.Anand and Suryas
For Respondent 2	: Ms.R.Sree Vidhya
For Respondent 1	: Exparte

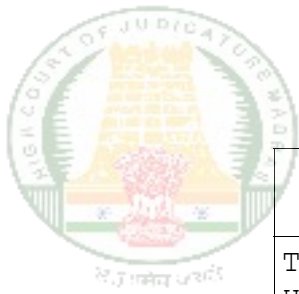
JUDGMENT

(This case is heard through Video Conferencing)

This civil miscellaneous appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 07.02.2013 passed by the Motor Accident Claims Tribunal (V Court of Small Causes, Chennai) in MCOP.No.4208 of 2011.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal in MCOP.No.4208 of 2011 has preferred this Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellant/claimant in MCOP.No.4208 of 2011 are as follows:

Heads	Award Amount (Rs.)
Loss of earning	18,000/-



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Heads	Award Amount (Rs.)
Transport to Hospital	5,000/-
Extra nourishment	2,500/-
Damage to clothes	500/-
Pain and suffering	15,000/-
Disability	80,000/- (40 x 2000)
Total	1,21,000/-

3. The Appellant/claimant sustained the following injuries on 02.01.2011 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent viz., (a) Fracture of right clavical and left clavical and (b) multiple injuries all over the body.

4. Before the Tribunal, the Appellant/claimant has filed documents which were marked as exhibits and two witnesses were examined on his side namely the Appellant/claimant himself as PW1 and the Doctor who examined him as PW6. On the side of the second respondent insurance company neither any document was filed nor any witness examined, before the Tribunal.

5. The Doctor PW6 has assessed the disability for the injuries sustained by the Appellant in his right clavicle at 30% and for the injuries sustained by him in his left clavicle at 30%. The Appellant/claimant even though was hospitalised as seen from the discharge summary which was marked as Ex.P5 before the Tribunal, has taken only conservative treatment in the hospital. No surgery was performed on him as a result of the injuries. The Tribunal after taking into consideration the disability certificate of the Appellant/claimant issued by the Doctor (PW6), has assessed the disability at 40% and has awarded disability compensation of Rs.80,000/- calculated at Rs.2,000/- per percentage of disability. The Tribunal has rightly not adopted the multiplier method while assessing the compensation based on the materials and evidence available on record. However, this Court is of the considered view that the accident having happened in the year 2011, the Tribunal ought to have assessed the disability compensation at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability. Accordingly, this court enhances the disability compensation to the Appellant/claimant to Rs.1,20,000/- calculated at Rs.3,000/- per percentage of disability instead of



Rs.80,000/- calculated at Rs.2,000/- per percentage of disability for 40% disability.

6. The Appellant/claimant was an auto driver at the time of the accident. He has sustained injuries in his left and right clavicles and also sustained simple injuries all over his body and was hospitalised for a period of one week. The Tribunal has awarded a compensation of Rs.18,000/- on lumpsum basis to the Appellant/claimant towards loss of earning which in the considered view of this court is low and it has to be enhanced. Having sustained injuries in his left and right clavicles, this Court is of the considered view that at least for a period of four months, the Appellant/claimant would have been unable to do his regular avocation as an auto driver. Therefore, this Court enhances the compensation towards loss of earning to the Appellant/claimant from Rs.18,000/- to Rs.25,000/-.

7. Similarly, the Tribunal has also awarded a lesser compensation towards transportation, Extra nourishment and damage to clothing. The Tribunal has awarded a compensation of Rs.5,000/- towards Transportation, Rs.2,500/- towards Extra nourishment and Rs.500/- towards damage to clothing which is enhanced to Rs.10,000/-, Rs.10,000/- and Rs.1,000/- respectively by this court.

8. The Tribunal has erroneously failed to award any compensation towards loss of amenities to the Appellant/claimant which he is legally entitled to as per the settled practice. After giving due consideration to the nature of injuries sustained by the Appellant/claimant and his avocation, this Court awards a compensation of Rs.5,000/- towards loss of amenities.

9. The Tribunal has awarded a compensation of Rs.15,000/- towards pain and suffering which in the considered view of this Court is a correct assessment and the same is confirmed by this Court.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,21,000/- to Rs.1,86,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning	18,000/-	25,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Transport to Hospital	5,000/-	10,000/-
Extra nourishment	2,500/-	10,000/-
Damage to clothes	500/-	1,000/-
Pain and suffering	15,000/-	15,000/-
Disability	80,000/- (40 x 2000)	1,20,000/-
Loss of amenities	--	5,000/-
Total	1,21,000/-	1,86,000/-

Conclusion:

11. In the result, this civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.1,21,000/- to Rs.1,86,000/-. The second respondent Insurance company is directed to deposit the enhanced award amount, after deducting the amount already deposited if any, together with interest and costs to the credit of MCOP.No.4208 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.4208 of 2011 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The V Judge,
Motor Accident Claims Tribunal
Court of Small Causes, Chennai



Copy to

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

+1 CC to M/s. Anand & Surya, Advocate sr 34201

+1 CC to Ms.R. Sreevidya, Advocate sr 34248

C.M.A.No.699 of 2016

CA (CO)
SP (02/03/2022)