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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.838 of 2016

Kalipathmanna

... Appellant/Claimant

Versus

1. L. Adhinarayanan

2. United India Insurance Co. Ltd.

Audiappa Gramani Street,

Royapuram,

Chennai - 600 013.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow this Civil Miscellaneous Appeal and to set aside the Judgment and Decree dated 2.11.2015 passed in M.C.O.P. No.1715 of 2014 on the file of the Motor accident Claims Tribunal cum IV Judge, Small Causes Court, Chennai and enhance the award amount.

For Appellant : Mr.Amar D. pandiya

For Respondents: Mr.G. Udaya Sankar for R2

R1 - Served - No appearance

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 02.11.2015 passed by the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai in M.C.O.P. No.1715 of 2014.

2. The appellant / claimant sustained injuries as a result of an accident caused by a vehicle insured with the second respondent and he preferred a claim before the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai in M.C.O.P. No.1715 of 2014 against the respondents.

3. The Tribunal under the impugned award directed the 2nd respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.1,96,000/-, as detailed hereunder :



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Heads	Amount awarded by the Tribunal (Rs.)
Disability	90000
Pain and suffering	50000
Extra nourishment	5000
Transport to Hospital	2500
Damages to clothes	1500
Attender charges	1000
Medical expenses	10000
Future Medical expenses	5000
Loss of income	13000
Loss of earning power	13000
Loss of amenities	5000
Total	196000

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

5. Heard Mr.Amar D. Pandiya, learned counsel for the appellant and Mr.G. Udaya Sankar, learned counsel for the second respondent / Insurance Company. Despite service of notice on the first respondent, there is no appearance on his side.

6. This Court has perused the materials and evidence available on record before the Tribunal.

7. The appellant / claimant sustained the following injuries on 04.01.2014 caused by a vehicle insured with the second respondent :

Fracture over right leg ankle and foot, head injury, facial injury and multiple internal and external injuries all over his body.

8. The appellant / claimant in his claim petition has pleaded that he was doing Jewellery business and aged 44 years at the time of the accident and was earning Rs.20,000/- p.m. at the time of the accident.



9. Before the Tribunal, the appellant / claimant has filed 8 documents, which were marked as Ex.P1 to Ex.P8 and two witnesses were examined on his side viz, the appellant / claimant himself as PW1 and the Doctor, who examined him as PW2. However, on the side of the respondents, neither any witness was examined nor any document was filed before the Tribunal.

10. The Doctor (PW2), who examined the appellant / claimant has assessed the disability to the appellant / claimant at 60%, however, the Tribunal on its own reduced the disability to 30% under the impugned award. The appellant / claimant was hospitalised for a period of 3 days as seen from the discharge summary issued by the hospital, which was marked as Ex.P4 before the Tribunal. The appellant / claimant has sustained two fractures and this Court is of the considered view that the reduction of the disability by half than what was assessed by the Doctor before the Tribunal is a drastic reduction and is without any basis. This Court is of the considered view that the disability of the appellant / claimant has to be assessed at 50% and not at 30% erroneously assessed by the Tribunal under the impugned award. Accordingly, this Court fixes the disability of the appellant / claimant at 50%. The Tribunal under the impugned award has assessed the disability compensation calculated at Rs.3,000/- per percentage of disability which in the considered view of this Court is a correct assessment considering the year of the accident, which happened on 04.01.2014. However in view of the disability assessed by this Court at 50%, the disability compensation is enhanced from Rs.90,000/- to Rs.1,50,000/-.

11. However, the Tribunal has awarded a lesser compensation of Rs.5,000/- towards extra nourishment; Rs.2,500/- towards transport to hospital and Rs.1,000/- towards Attender charges which has to be necessarily enhanced, considering the nature of injuries sustained by the appellant / claimant. Accordingly, this Court enhances the compensation towards extra nourishment from Rs.5,000/- to Rs.10,000/-; for transport to hospital from Rs.2500/- to Rs.10,000/- and for attender chargers from Rs.1,000/- to Rs.5,000/-.

12. Insofar as the compensation awarded by the Tribunal under the heads pain and suffering at Rs.50,000/-; Damage to clothing at Rs.1,500/-; medical expenses at Rs.10,000/-; future medical expenses at Rs.5,000/-; loss of income at Rs.13,000/-; loss of earning power at Rs.13,000/- and loss of amenities at Rs.10,000/- are concerned, this Court is of the considered view that the same cannot be considered to be low as alleged by the appellant.



13. 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 *Rs.3,000/- x 30% #Rs.3,000/- x 50%	90000 *	1,50,000 #
Pain and suffering	50000	50000
Extra nourishment	5000	10000
Transport to Hospital	2500	10000
Damages to clothes	1500	1500
Attender charges	1000	10000
Medical expenses	10000	10000
Future Medical expenses	5000	5000
Loss of income	13000	13000
Loss of earning power	13000	13000
Loss of amenities	5000	5000
Total	196000	277500

14. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.1,96,000/- to Rs.2,77,500/- as indicated above. No costs.

15. 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 M.C.O.P. No.1715 of 2014 on the file of the Motor accident Claims Tribunal cum IV Judge, Small Causes Court, Chennai, within a period of four 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.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The IV Judge,
Small Causes Court,
Motor accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+2cc to M/s.G.Udayashankar, Advocate Sr.24138, 24509

+1cc to M/s.S.Ravi Kumar, Advocate Sr.24137

C.M.A.No.838 of 2016

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srg 01/11/2021