

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1675 of 2021

Aravinth Kumar

..Appellant/Petitioner

Vs.

1. The Correspondent,
Saraswathi Matriculation School,
Vazapady, Salem District.
2. National Insurance Company Ltd.,
Branch Office: 2, F-215, Omalur Main Road,
PO-27, Maruthi Complex, 2nd Floor,
Salem.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Judgment and Decree dated 25.09.2018, made in M.C.O.P.No.658 of 2017, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Salem by enhancing the award amount.

For Appellant : Mr.Amar D.Pandiya
for Mr.M.Mohamed Riyaz

For Respondent 2: Mrs.R.Sree Vidhya

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 25.09.2018, passed by the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Salem in M.C.O.P.No.658 of 2017.

2. The appellant not satisfied with the quantum of compensation awarded by the Tribunal as well as fixing the contributory negligence at 20% on his part by the Tribunal, has preferred this appeal seeking for enhancement. Details of the

compensation awarded by the Tribunal under the impugned Award are as follows:

Sl.No .	Heads	Amount in Rs.
1.	Loss of earning capacity	1,58,760
2.	Pain and Sufferings	10,000
3.	Loss of amenities	15,000
4.	Medical Bills	2,15,984
5.	Transportation	5,000
6.	Extra Nourishment	5,000
7.	Attender Charges	7,500
8.	Damage to clothes and articles	500
	Total	4,17,744
	Less: 20 % Contributory Negligence	3,34,195

3. As seen from the impugned award, no proper reasons have been given for fixing contributory negligence on the part of the appellant/claimant at 20%. The Tribunal under the impugned Award excepting for stating that the appellant/claimant has violated the terms and conditions of the insurance policy, has not given any specific reason as to which clause under the insurance policy, he has violated. Therefore, this Court is of the considered view that the fixing of contributory negligence on the part of the appellant/claimant by the Tribunal has to be set aside. Therefore, the fixation of the contributory negligence by the Tribunal on the part of the appellant/claimant at 20% is hereby set aside by this Court.

4. The appellant/claimant has sustained skull fracture, brain injury and multiple injuries all over his body. He has been hospitalized for 13 days and the discharge summary has also been marked as an exhibit before the Tribunal. The nature of injuries sustained by the appellant/claimant has not been disputed by the respondents and the period of hospitalization also has not been disputed. Therefore, this Court is of the considered view that the compensation awarded by the Tribunal towards pain and sufferings, loss of amenities, transportation, extra nourishment and attender charges is low and it has to be enhanced as the Tribunal has not given due consideration to the nature of injuries sustained by the appellant/claimant and his period of hospitalization.

5. After giving due consideration to the avocation and nature of injuries as well as the period of hospitalization, this Court enhances the compensation awarded by the Tribunal towards pain and sufferings from Rs.10,000 to Rs.20,000/-, towards loss of amenities from Rs.15,000/- to Rs.20,000/-, towards transportation from Rs.5,000/- to Rs.10,000/-, towards extra nourishment Rs.5,000/- to Rs.10,000/- and towards attender charges from Rs.7,500/- to Rs.20,000/-. In so far as the compensation awarded by the Tribunal towards medical expenses at Rs.2,15,984/- is concerned, the same is supported by medical bills and therefore the same is confirmed by this Court.

6. The Tribunal has failed to award any compensation towards loss of income to the appellant/claimant, which, it ought to have awarded considering the nature of injuries sustained by the claimant as well as his avocation. At least for a period of six months, the appellant/claimant would have been unable to do his regular avocation. The Tribunal has notionally fixed the monthly income of the appellant/claimant at Rs.10,000/- p.m. which is confirmed by this Court. Since loss of income was not awarded by the Tribunal, this Court is awarding a sum of Rs.60,000/- i.e., calculated at Rs.10,000/- p.m. for a period of six months.

7. The Tribunal has awarded compensation towards loss of earning capacity to the appellant/claimant at Rs.1,58,760/- based on 20% disability assessed by the doctor (P.W.2). The nature of injuries sustained by the appellant/claimant does not deserve adoption of multiplier method, which the Tribunal has erroneously awarded under the impugned award. The appellant/claimant failed to prove through oral and documentary evidence that due to the injuries sustained by him, he has suffered loss of earning capacity. Therefore the Tribunal ought to have ordered disability compensation based on percentage of disability. Therefore, the compensation awarded by the Tribunal towards loss of earning capacity at Rs.1,58,760/- is hereby set aside by this Court and instead this Court awards disability compensation at Rs.80,000/- i.e. calculated at Rs.4,000/- x 20% of disability suffered by the appellant/claimant, since the year of accident is 2016. In so far as the compensation awarded by the Tribunal towards damage to clothes and articles at Rs.500/- is concerned, the same is also confirmed by this Court as it is a just compensation.

8. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is enhanced to

Rs.4,36,484/- instead of Rs.3,34,195/- awarded by the Tribunal. As observed earlier, the contributory negligence of 20% erroneously fixed by the Tribunal under the impugned Award on the appellant/claimant is set aside. The details of the compensation now awarded by this Court is detailed hereunder:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or set aside or granted or reduced (Rs.)
1.	Loss of earning capacity	1,58,760	- - -	Set aside
2.	Towards Disability @ 20%	- - -	80,000	Awarded
3.	Pain and Sufferings	10,000	20,000	Enhanced
4.	Loss of amenities	15,000	20,000	Enhanced
5.	Medical Bills	2,15,984	2,15,984	Confirmed
6.	Transportation	5,000	10,000	Enhanced
7.	Extra Nourishment	5,000	10,000	Enhanced
8.	Attender Charges	7,500	20,000	Enhanced
9.	Damage to clothes and articles	500	500	Confirmed
10.	Towards loss of income	- - -	60,000	Awarded
	Total	4,17,744	4,36,484	Enhanced by Rs.1,02,289
	Less: 20 % Contributory Negligence	3,34,195	- - -	

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,34,195/- awarded by the Tribunal is hereby enhanced to Rs.4,36,484/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. However, it is made clear that the appellant/claimant will not be entitled for any interest on the enhanced compensation amount for the delay period of 399 days as held by this Court in C.M.P.No.5901 of 2021 in C.M.A.SR.No.30909 of 2021 dated 01.04.2021. The second respondent / insurance company is directed to deposit the enhanced award amount now determined by this Court along with

interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.658 of 2017, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.2, Salem. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court No.2, Salem.

Copy to
The Section Officer,
VR Section, High Court, Madras.

+1 CC to Mr.M.Mohamed Riyaz, Advocate sr 52867
+1 CC to M/s.R. Sreevidhya, Advocate sr 52623.

C.M.A.No.1675 of 2021

SRA(CO)
SP(03/01/2022)