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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2747 of 2021

S. Veerasekar

...Appellant

Vs

1.Anbunesan

2.Divisional Manager,  
National Insurance Company,  
Door No.110, J.N.Street,  
Puducherry.

...Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 17.04.2017 in M.C.O.P.No.1498 of 2015 on the file of the learned Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore.

For Appellant : Ms.Ramya V.Rao

For R.2 : R. Sankaranarayanan

#### JUDGMENT

Unsatisfied with the compensation award passed by the Motor Accidents Claims Tribunal, Special Judge, Cuddalore, in M.C.O.P.No.1498 of 2015 dated 17.04.2017, the appellant/claimant has preferred the present appeal, seeking enhancement.

2. The Tribunal has awarded a total compensation of Rs.12,57,282/- (Rupees Twelve Lakhs Fifty Seven thousand two hundred eighty two only) to the appellant/claimant as detailed hereinunder:-

| Heads          | Amount awarded<br>by the Tribunal<br>(Rs.) |
|----------------|--------------------------------------------|
| Pecuniary Loss | 8,56,000/-                                 |
| Medical Bills  | 2,62,412/-                                 |



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| Heads                  | Amount awarded<br>by the Tribunal<br>(Rs.) |
|------------------------|--------------------------------------------|
| Future Medical Bills   | 50,800/-                                   |
| Transportation charges | 32,270/-                                   |
| Pain and Sufferings    | 40,000/-                                   |
| Extra Nourishment      | 10,000/-                                   |
| Damage to Clothing     | 5,000/-                                    |
| Total compensation     | 12,57,282/-                                |

3. The appellant/claimant has sustained permanent disability as assessed by the Medical Board and the disability certificate has been marked as Ex.P.14. The appellant/claimant has sustained brachial plexus injury on the right upper limb and reverse nerve of grafting have been performed on the appellant/claimant and the nature of the injuries sustained by the appellant/claimant has not been disputed by the respondent and the appellant/claimant's permanent disability has also not been disputed by the Insurance Company, since no appeal has been filed by the Insurance Company, aggrieved by the findings of the Tribunal, under the impugned order.

4. The appellant/claimant was a driver and the accident occurred on 07.03.2015. In the claim petition, the appellant/claimant has pleaded that he was earning a sum of Rs.15,000/- per month. However, the Tribunal had fixed the notional monthly income of Rs.7,000/-per month.

5. The Tribunal, by considering the year of the accident, ought to have fixed higher notional monthly income.

6. After giving due consideration of the age of the appellant/claimant as well as the year of the accident, this Court enhances the notional monthly income of the appellant/claimant at Rs.11,000/-per month, instead of Rs.7,000/- erroneously fixed by the Tribunal.

7. Since the appellant/claimant was aged at 28 years at the time of accident, the Tribunal has adopted the correct multiplier of "17".



8. The Medical Board has assessed the disability of the appellant/claimant at 80%, whereas, the Tribunal has taken the whole body disability of the appellant and fixed at 60%, which is the correct assessment.

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9. Excepting for enhancement of notional monthly income of the appellant/claimant from Rs.7,000/- to Rs.11,000/-, the percentage of the disability fixed at 60% by the Tribunal and the multiplier of "17" adopted by the Tribunal, remain unaltered.

10. Since notional monthly income of the appellant/claimant has been enhanced to Rs.11,000/-, the loss of earning capacity of the appellant/claimant is reassessed by this Court at Rs.13,46,400/- (11,000 x 12 x 17 x 60/100).

11. The Tribunal erroneously failed to award any compensation towards loss of amenities, which the appellant/claimant is legally entitled to as per law.

12. This Court after giving due consideration of the nature of injuries sustained and also his avocation, fixes a compensation of Rs.10,000/- towards loss of amenities.

13. Insofar as the compensation awarded under various other heads viz., pain and sufferings, extra nourishment, transportation, damage to clothing, the compensation awarded by the Tribunal is just and reasonable and there is no question of enhancement under these heads.

14. For the foregoing reasons, the compensation awarded by the Tribunal is modified as under by enhancing from Rs.12,57,282/- (Rupees Twelve lakhs fifty seven thousand two hundred eighty two only ) to Rs.17,56,882/- (Rupees Seventeen lakhs fifty six thousand eight hundred eighty two only).

| Heads          | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) | Award confirmed or enhanced or granted |
|----------------|--------------------------------------|------------------------------------|----------------------------------------|
| Pecuniary loss | 8,56,800/-                           | 13,46,400/-                        | Enhanced                               |
| Medical Bills  | 2,62,412/-                           | 2,62,412/-                         | Confirmed                              |



| Heads                 | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) | Award confirmed or enhanced or granted |
|-----------------------|--------------------------------------|------------------------------------|----------------------------------------|
| Furture Medical Bills | 50,800/-                             | 50,800/-                           | Confirmed                              |
| Transportation        | 32,270/-                             | 32,270/-                           | Confirmed                              |
| Pain and Suffering    | 40,000/-                             | 40,000/-                           | Confirmed                              |
| Extra Nourishment     | 10,000/-                             | 10,000/-                           | Confirmed                              |
| Damage to Clothing    | 5,000/-                              | 5,000/-                            | Confirmed                              |
| Loss of Amenities     | -                                    | 10,000/-                           | Granted                                |
| Total Compensation    | 12,57,282/-                          | 17,56,882/-                        | Enhanced                               |

15. Accordingly, the civil miscellaneous appeal is allowed by enhancing the award amount from Rs.12,57,282/- to Rs.17,56,882/- (Rupees Seventeen Lakhs Fifty Six thousand eight hundred eighty two only).

16. The second respondent is directed to deposit the compensation amount of Rs.17,56,882- (Rupees Seventeen lakhs fifty six thousand eight hundred eighty two only), awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of M.C.O.P.No.1498 of 2015 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.1498 of 2015 to the bank account of the claimant through RTGS within a period of one week thereafter.

SD/-  
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sr  
To

1.The Motor Accidents Claims Tribunal,  
Special Sub Judge,  
Cuddalore.



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

+2cc to M/s.Ramya V.Rao, Advocate Sr.51206  
+1cc to Mr.P.Sankaranarayanan, Advocate Sr.51231

C.M.A.No. 2747 of 2021

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srg 17/12/2021