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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. 1621 OF 2021

C.Elavarsu

...Appellant/Petitioner

Vs

1. R.Keerthivasan

2. The Oriental Insurance Co Ltd.,
No.115, Broadway,
Chennai - 600 108

...Respondents/Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 11.02.2020 in M.C.O.P.No.7332 of 2013 on the file of the learned Motor Accident Claims Tribunal, (V Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R.2 : Mr.K.Vinod
for Mr.Elveera Ravindran

JUDGMENT

Unsatisfied with the compensation award passed by the Motor Accidents Claims Tribunal, (V Small Causes Court), Chennai, in M.C.O.P.No.7332 of 2013 dated 11.02.2020, the appellant/claimant has preferred the present appeal, seeking enhancement.

2. The Tribunal has awarded a total compensation of Rs.3,45,700/- (Rupees Three Lakhs Forty Five thousand seven



hundred only) to the appellant/claimant as detailed hereunder:-

Heads	Amount awarded by the Tribunal (Rs.)
Pain and Sufferings	50,000/-
Extra Nourishment and Transport	40,000/-
Disability 30% @ Rs.3,000/-per percentage	90,000/-
Loss of Income for 10 months (Rs.8103 x 10)	81,030/-
Medical Expenses	29,983/-
Loss of Amenities	40,000/-
Damage to Clothes	1,000/-
Attender charges	13,650/-
Total compensation	3,45,663/-

Rounded off to Rs.3,45,700/-

3. The appellant/claimant has sustained both bone fracture of left leg with comminuted proximal tibia fracture with foot drop.

4.The nature of injuries sustained by the appellant has not been disputed by the Insurance Company before the Tribunal. The doctor assessed the disability at 40%, but, however, the Tribunal, without assigning any reason, has reduced the disability of the appellant/claimant at 30%. Since no valid reason has been assigned by the Tribunal for reduction of the disability of the appellant/claimant at 30%, this Court has to necessarily accept the findings of the doctor, who assessed the disability of the appellant/claimant at 40%. Accordingly, the disability of the appellant/claimant is assessed by this Court at 40% instead of 30%, erroneously fixed by the Tribunal.

5. The Tribunal awarded a sum of Rs.90,000/- (Rupees Ninety thousand only) towards disability for 30% (Rs.3.000/-per percentage). If the year of the accident and the nature of the injuries sustained by the appellant/claimant were given due



consideration by the Tribunal, the disability compensation ought to have been awarded on the higher side. Since the nature of injuries sustained by the appellant/claimant referred to supra deserves higher compensation, this Court enhances the disability compensation at Rs.1,60,000/- (Rupees One Lakh sixty thousand only), calculated at Rs.4,000/- per percentage (Rs.4,000 x 40), instead of Rs.90,000/- erroneously fixed by the Tribunal.

6. The Tribunal has awarded a compensation of Rs.50,000/- towards pain and sufferings. The appellant/claimant was hospitalised for 23 days. The Discharge Summaries issued by the hospital have been marked as Exs.P.2 to P.4. The period of hospitalisation undergone by the appellant/claimant has also not been disputed by the Insurance Company. After giving due consideration to the nature of injuries sustained by the appellant/claimant and the period of hospitalisation, this Court deems it fit to enhance the compensation amount towards pain and sufferings from Rs.50,000/- to Rs.75,000/-.

7. The Tribunal has also awarded lesser compensation towards loss of amenities and attender charges. If the nature of the injuries and the period of hospitalisation undergone by the appellant/claimant were given due consideration by the Tribunal, it ought to have awarded higher compensation towards those heads. Accordingly, this Court enhances the compensation towards loss of amenities to Rs.50,000/- instead of Rs.40,000/- erroneously fixed by the Tribunal and enhances the compensation towards attender charges to Rs.25,000/- instead of Rs.13,650/- erroneously fixed by the Tribunal.

8. The Tribunal has not given adequate compensation to the appellant/claimant towards loss of income. The Tribunal awarded a sum of Rs.81,030/- towards loss of income during the treatment period for 10 months at Rs.8,103/-per month. The claimant was a bus driver at SETC . In the claim petition, the appellant/claimant has pleaded that he was earning a sum of Rs.16,000/per month. However, the Tribunal has fixed the notional monthly income of the appellant/claimant as Rs.8,103/- . Considering the year of the accident, this Court is of the considered view that the notional monthly income of the appellant/claimant, fixed by the Tribunal is too low and it has to be necessarily enhanced.



9. After giving due consideration to the year of the accident, occurred in the year 2013, and the appellant/claimant, being the bus driver, he is entitled for higher fixation of notional monthly income. Therefore, this Court enhances the notional monthly income of the appellant/claimant to Rs.12,000/- instead of Rs.8,103/-erroneously fixed by the Tribunal. Accordingly, loss of income for the appellant/claimant during the treatment period of 10 months comes to Rs.1,20,000/- (Rs.12,000 x 10 months) instead of Rs.81,030/-.

10. The Tribunal has erroneously failed to award compensation towards future medical expenses. This Court, after giving due consideration to the nature of injuries sustained by the appellant/claimant, he will be incurring the medical expenses in future also. Therefore, this Court is of the considered view that an amount of Rs.15,000/- is awarded towards future medical expenses.

11. For the foregoing reasons, the compensation awarded by the Tribunal is modified as under by enhancing from Rs.3,45,700/- (Rupees Three Lakhs Forty Five thousand Seven hundred only) to Rs.5,25,983/-(Rupees Five Lakhs Twenty five thousand nine hundred eighty three only).

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Pain and Sufferings	50,000/-	75,000/-	Enhanced
Extra Nourishment and Transport	40,000/-	50,000/-	Enhanced
Disability 30% @ Rs.3,000/-per percentage	90,000/-	1,60,000/-	Enhanced
Loss of Income for 10 months (Rs.8103 x 10)	81,030/-	1,20,000/-	Enhanced
Medical Expenses	29,983/-	29,983/-	Confirmed
Loss of Amenities	40,000/-	50,000/-	Enhanced



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Damage to Clothes	1,000/-	1,000/-	Confirmed
Attender charges	13,650/-	25,000/-	Enhanced
Future Medical Expenses	-	15,000/-	Granted
Total compensation	3,45,663/-	5,25,983/-	Enhanced

12. Accordingly, the civil miscellaneous appeal is allowed by enhancing the award amount from Rs.3,45,663/- to Rs.5,25,983/- (Rupees Five Lakhs Twenty five thousand nine hundred eighty three only).

13. The second respondent is directed to deposit the compensation amount of Rs.5,25,983/- (Rupees Five Lakhs Twenty five thousand nine hundred eighty three 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 MCOP.No.7332 of 2013 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.7332 of 2013 to the bank account of the claimant through RTGS within a period of one week thereafter.

No costs.

Sd/-
Assistant Registrar

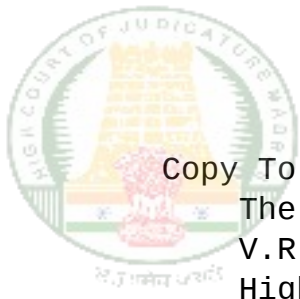
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Sub Assistant Registrar

sr

To

The Presiding Officer,
Motor Accidents Claims Tribunal,
(V Small Causes Court), Chennai.



Copy To

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

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+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.50971

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.51534

C.M.A.No. 1621 of 2021

PPA(CO)

RLP(25/10/2021)