IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2188 of 2021

Poongodi ... Appellant /Petitioner

Vs

1.Mani

2.The Iffco Tokio General Insurance Company Ltd.,
JH towers, 2nd Floor, New No.24, Old No.302,
LIC Colony Road, Salem - 636 004.

3.Shankar

4.The Bharti Axa General Insurance Company Ltd.,
Divya Trade Centre, 1st Floor, No.11,
Brindavan Road, Fairlands, Salem - 636 016.
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in MCOP.No.519 of 2018 dated 21.10.2019 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.1, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent 1 : No appearance

For Respondent 2 : Ms.Rathana Thara

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.10.2019 passed by the Motor Accident Claims Tribunal (Special Subordinate Judge No.1, Salem) in MCOP.No.519 of 2018.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal

seeking for enhancement. The Tribunal under the impugned award directed the second respondent Insurance Company to pay the Appellant/claimant a compensation of Rs.1,67,500/- together with interest and costs and recover the same from the first respondent as detailed hereunder:

Heads	Award Amount (Rs.)
Pain and suffering	15,000/-
Loss of income	30,000/-
Medical expenses	31,500/-
Transportation charges	10,000/-
Extra nourishment	10,000/-
Attender Charges	10,000/-
Damage to clothing	1,000/-
Loss of amenities	15,000/-
Disability	45,000/-
Total	1,67,500/-

3. As a result of an accident which happened on 12.06.2017 caused by a vehicle insured with the second respondent Insurance Company, the Appellant/claimant sustained following injuries namely (a) Grievous injury and (b) Permanent disability.

4. The nature of injuries sustained by the Appellant/claimant and the cause of the accident has not been disputed by the second respondent as no appeal has been filed aggrieved by the findings of the Tribunal under the impugned award. The only question that arises for consideration is that whether the quantum of compensation awarded by the Tribunal is a just compensation or not.

5. Before the Tribunal, the Appellant/claimant has filed twelve documents which were marked as Ex.A1 to Ex.A12 and one witness was examined on her side namely the Appellant/claimant herself as PW1. Two documents were marked as Court exhibits namely Ex.C1 and Ex.C2 which includes the disability certificate issued by Omalur Medical Board. On the side of the second respondent Insurance company, neither any document was filed nor any witness examined, before the Tribunal.

6. As seen from Ex.C1, the Omalur Medical Board has assessed the disability of the Appellant/claimant at 15% which has been accepted by the Tribunal under the impugned award. The Tribunal has awarded a disability compensation of Rs.45,000/- to the

Appellant/claimant calculated at Rs.3,000/- per percentage of disability for the 15% disability assessed by the Omalur Medical Board which in the considered view of this Court is low and therefore, it has to be necessarily enhanced. If the year of the accident was taken into consideration, the Tribunal ought to have awarded a higher compensation towards disability suffered by the Appellant/claimant. This Court is of the considered view that since the accident happened in the year 2017, the disability compensation will have to be awarded to the Appellant/claimant at Rs.5,000/- per percentage of disability instead of Rs.3,000/- per percentage of disability erroneously fixed by the Tribunal. Accordingly, this Court enhances the disability compensation to the Appellant/claimant at Rs.75,000/- instead of Rs.45,000/- erroneously fixed by the Tribunal.

7. The Appellant /claimant was a coolie (labourer) at the time of the accident. The Tribunal has fixed the notional monthly income of the Appellant/claimant at Rs.7,500/- which in the considered view of this Court is low. If the Tribunal has taken into consideration the year of the accident, it ought to have fixed the notional monthly income of the Appellant/claimant at a higher sum. After giving due consideration to the year of the accident which happened in the year 2017, this court reassesses the notional monthly income of the Appellant/claimant at Rs.10,000/- instead of Rs.7,500/- erroneously fixed by the Tribunal.

8. The Tribunal has awarded a compensation of Rs.30,000/- towards loss of income during the period of the Appellant's/claimant's treatment calculated at Rs.7,500/- per month for a period of four months. Since the notional monthly income of the Appellant/claimant is enhanced to Rs.10,000/- by this Court, this Court enhances the compensation towards loss of income during the period of her treatment to Rs.40,000/- calculated at Rs.10,000/- per month for a period of four months instead of Rs.30,000/- calculated at Rs.7,500/- for a period of four months fixed by the Tribunal.

9. The Tribunal has also erroneously failed to award any compensation towards future medical expenses to the Appellant/claimant. After giving due consideration to the nature of injuries sustained by the Appellant/claimant referred to supra as well as the period of her hospitalisation, i.e, eight days, this Court awards a compensation of Rs.20,000/- towards loss of future medical expenses to the Appellant/claimant.

10. Insofar as the compensation awarded by the Tribunal under various other heads namely pain and suffering, compensation towards medical expenses, transportation charges, extra nourishment, attender charges, loss of clothing, loss of

amenities are concerned, the compensation awarded by the Tribunal cannot be considered to be unjust and therefore, the same is confirmed by this Court.

11. The Tribunal under the impugned award has granted pay and recovery rights to the second respondent Insurance Company in view of the fact that the driver of the insured vehicle was not possessing a valid driving license and the same is confirmed by this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced by this Court from Rs.1,67,500/- to Rs.2,27,500/- in the following manner:

Heads	Amount Awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pain and suffering	15,000/-	15,000/-
Loss of income	30,000/-	40,000/-
Medical expenses	31,500/-	31,500/-
Transportation charges	10,000/-	10,000/-
Extra nourishment	10,000/-	10,000/-
Attender Charges	10,000/-	10,000/-
Damage to clothing	1,000/-	1,000/-
Loss of amenities	15,000/-	15,000/-
Disability	45,000/-	75,000/-
Future Medical Expenses	--	20,000/-
Total	1,67,500/-	2,27,500/-

13. In the result, this civil miscellaneous appeal is partly allowed by enhancing award amount from Rs.1,67,500/- to Rs.2,27,500/-. The second respondent Insurance Company is directed to deposit the enhanced award amount of Rs.2,27,500/- after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.519 of 2018 within a period of four weeks from the date of receipt of a copy of this Judgement and recover the same from the owner of the vehicle namely the first respondent. On such deposit being made, the

Tribunal shall transfer the amount lying to the credit of MCOP.No.519 of 2018 to the bank account of the Appellant/claimant directly through RTGS within a period of one week thereafter. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.1,
Motor Accidents Claims Tribunal, Salem.

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

C.M.A.No.2188 of 2021

NRL(CO)
CB(21/10/2021)