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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2191 of 2021

Gowtham

... Appellant/Petitioner

Vs

1. The Chairman,
Acharya Polytechnic College,
Poolampatti,
Salem - 637 101.

2. National Insurance Company Limited,
Policy Issuing Office at Salem Branch-3,
Divisional Office I,
LRN Complex,
Saradha College Road,
Salem 636 007.

... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Award passed M.C.O.P.No.40 of 2019 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Salem, dated 14.07.2020.

For Appellants	: M/s. J.Prithivi
For Respondent 1	: No Appearance
For Respondent 2	: Mr. D.Baskaran

JUDGMENT

This appeal has been filed by the claimant, seeking enhancement of compensation, under the impugned award dated 14.07.2020 passed by the Motor Accidents Claims Tribunal, Principal District Judge, Salem in the M.C.O.P.No. 40 of 2019.

2. The appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal, has preferred this appeal. The details of compensation awarded by the Tribunal to the appellant/claimant are as follows:



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Heads	Amount awarded by the Tribunal (Rs.)
Disability 25% (Rs.3000/- per percentage)	75,000/-
Loss of earning	35,000/-
Pain and Sufferings	25,000/-
Attender Charges	10,000/-
Transportation	10,000/-
Extra Nourishment	10,000/-
Loss of amenities	15,000/-
Medical Expenses	2,15,366/-
Total Compensation	3,95,366/-

3. The appellant/claimant sustained fracture on his left leg, and fracture of right mandible, as a result of an accident caused by a vehicle, owned by the first respondent on 20.11.2017 and insured with the second respondent. The cause of the accident has not been disputed by the respondents. The only issue that arises for consideration in this appeal is as to whether the appellant/claimant is entitled for enhancement of compensation.

4. The Medical Board has assessed the disability at 25% and the Tribunal has awarded a compensation of Rs.75,000/- (Rupees Seventy Five Thousand only) calculated at Rs.3,000/- (Rupees Three Thousand only) per percentage disability for the 25% disability.

5. The accident happened in the year 2017. This Court is of the considered view that the Tribunal has not given due consideration to the nature of injuries sustained by the appellant/claimant as well as the year of the accident before assessing the disability compensation. This Court, after giving due consideration to the nature of injuries sustained by the appellant/claimant as well as the year of the accident, is of the considered view that the disability compensation will have to be assessed at Rs.5,000/- (Rupees Five Thousand only) per percentage of disability instead of Rs.3,000/- erroneously fixed by the Tribunal.



6. However, this Court confirms the assessment of disability by the Tribunal at 25% as the same has been assessed only based upon the Medical Board's report. Accordingly, this Court enhances the disability compensation at Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) calculated at Rs.5,000/- (Rupees Five Thousand only) per percentage of disability for the 25% disability, instead of Rs.75,000/- (Rupees Seventy Five Thousand only), erroneously fixed by the Tribunal.

7. The appellant/claimant was a painter, aged at 19 years at the time of the accident and was an ITI diploma holder, as seen from the claim petition filed before the Tribunal. In the claim petition, the appellant/claimant has pleaded that he was earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month. However, no documentary evidence has been produced by him before the Tribunal to prove his monthly income. The Tribunal has fixed the notional monthly income at Rs.7,000/- (Rupees Seven Thousand only), which this Court is of the considered view is low. If the Tribunal, had taken into consideration the year of the accident, it ought to have fixed the notional monthly income of the claimant on a higher side. After giving due consideration to the avocation of the appellant/claimant as well as the year of the accident, this Court enhances the notional monthly income of the appellant/claimant to Rs.9,000/- (Rupees Nine Thousand only).

8. However, this Court is of the considered view that the Tribunal has rightly awarded the loss of income to the appellant/claimant for a period of five months after giving due consideration to the nature of injuries sustained by the appellant/claimant. Since, the notional monthly income of the appellant/claimant is enhanced to Rs.9,000/- (Rupees Nine Thousand only), the loss of income of the appellant/claimant is reassessed by this Court at Rs.45,000/- (Rupees Forty Five Thousand only), calculated at Rs.9,000/- per month for a period of five months.

9. Insofar as the compensation awarded by the Tribunal towards other heads, referred to supra, are concerned, this Court does not find any infirmity in the assessment made by the Tribunal under those heads.

10. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,95,366/- (Rupees Three Lakhs Ninety Five Thousand Three Hundred and Sixty Six only) to Rs.4,55,366/- (Rupees Four Lakhs Fifty Five Thousand Three Hundred and Sixty Six only) by this Court as detailed hereunder:



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Disability 25% (Rs.3000/- per percentage)	75,000/-	1,25,000/-	Enhanced
Loss of earning	35,000/-	45,000/-	Enhanced
Pain and Sufferings	25,000/-	25,000/-	Confirmed
Attender Charges	10,000/-	10,000/-	Confirmed
Transportation	10,000/-	10,000/-	Confirmed
Extra Nourishment	10,000/-	10,000/-	Confirmed
Loss of amenities	15,000/-	15,000/-	Confirmed
Medical Expenses	2,15,366/-	2,15,366/-	Confirmed
Total Compensation	3,95,366/-	4,55,366/-	Enhanced

11. Accordingly, the civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.3,95,366/- (Rupees Three Lakhs Ninety Five Thousand Three Hundred and Sixty Six only) to Rs.4,55,366/- (Rupees Four Lakhs Fifty Five Thousand Three Hundred and Sixty Six only).

12. The second respondent Insurance Company is directed to deposit the compensation amount of Rs.4,55,366/- (Rupees Four Lakhs Fifty Five Thousand Three Hundred and Sixty Six 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.40 of 2019 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.40 of 2019 to the bank account of the claimant through RTGS within a period of one week thereafter.

No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar



1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Salem

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

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.53056

C.M.A. No. 2191 of 2021

RSI (CO)
CB(19/01/2022)