

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.279 of 2014

Madheswaran

... Appellant/Petitioner

Versus

1. Senthil Murugan

2. ICICI Lombard Motor Insurance Company Limited,
No.84/85, Wall Tax Road,
Chennai - 3.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.09.2013 and made in M.A.C.T.O.P. No.4189 of 2012 on the file of the Motor Accident Claims Tribunal (In the Court of III Small Causes), Chennai.

For Appellant : Ms. A. Subadra
for M/s.Terry Chella Raja

For Respondents : Ms. Shobana for
M/s.Sree Vidhya for R2
R1 - Set exparte in Lower Court

JUDGMENT

(Heard video conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 13.09.2013 passed by the III Court of Small Causes, Motor Accident Claims Tribunal) Chennai, in M.C.O.P.No.4189 of 2012.

2. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income	30000
Transport to hospital	7000
Extra nourishment	4000
Damage to clothing	1000
Medical expenses	60000
Attender charges	5000
Loss of amenities of life	10000
Pain and sufferings	30000
Permanent disability	100000
Total compensation	247000

4. Heard Ms. A.Subadra, learned counsel for the appellant / claimant and Ms.Shobana, learned counsel for the 2nd respondent / Insurance Company.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The appellant / claimant has sustained compound fracture of Tibia and Fibula in his right leg as a result of an accident on 19.06.2012 caused by a vehicle owned by the first respondent and insured with the second respondent. Due to the injuries sustained, open reduction and external fixation was done on the appellant / claimant and wound debriment was also done. The external fixator was removed from the appellant / claimant on 16.08.2012. The appellant / claimant was hospitalised at Government Vellore Medical College Hospital from 20.06.2012 to 19.08.2012. The Discharge summary issued by the Vellore Medical College hospital was also marked as Ex.B2 before the Tribunal. The appellant / claimant has filed the medical certificate, which has been marked as Ex.P3 and the medical bills in support of the expenses incurred by him for his treatment, which has also been marked as Ex.P4 before the Tribunal. The Doctor has assessed the disability of the appellant / claimant at 50% as seen from the disability certificate, Ex.P7. The nature of injuries sustained by the appellant / claimant and the period of his hospitalisation has not been disputed by the respondents as seen from the evidence available on record. The appellant / claimant in his claim petition has pleaded that he was working as Security personnel at Teja Detective Services and was earning

Rs.10,000/-p.m., at the time of the accident. However, the Tribunal has fixed the notional monthly income of the appellant /claimant at Rs.5,000/-, since the appellant / claimant has not produced any documentary evidence in support of his claim that he was earning Rs.10,000/-p.m., at the time of the accident. This Court is of the considered view that since the accident happened in the year 2012, the notional monthly income fixed by the Tribunal at Rs.5,000/- is low and it has to be enhanced. After giving due consideration to the year of the accident, this Court enhances the notional monthly income of the appellant / claimant at Rs.6,500/-. The Tribunal has calculated the loss of earning for the appellant / claimant during the period of his treatment for the period of six months, which is a correct assessment. Since the monthly income of the appellant / claimant is enhanced to Rs.6,500/-, the loss of income to the appellant / claimant during the period of his treatment is enhanced to Rs.39,000/- (Rs.6,500/- x 6).

7. However, the Tribunal has not taken into consideration the fact that the appellant /claimant was hospitalised for a period of two months while assessing the compensation towards attender charges. The Tribunal has awarded a compensation of Rs.5,000/- towards attender charges which in the considered view of this Court is low and it has to be enhanced. After giving due consideration to the period of the appellant / claimant's hospitalisation, this Court enhances the compensation towards attender charges to Rs.10,000/- instead of Rs.5,000/- fixed by the Tribunal.

8. However, the Tribunal has awarded a compensation of Rs.1,00,000/- towards permanent disability calculated at Rs.2,500/- per percentage of disability for the 50% disability of the appellant / claimant assessed by the Tribunal. Since the year of the accident is 2012, this Court is of the considered view that the Tribunal ought to have fixed the disability compensation at Rs.3,000/- per percentage of disability instead of Rs.2,000/-. Accordingly, this Court enhances the disability compensation to Rs.1,50,000/- calculated at Rs.3,000/- per percentage of disability for the 50% disability instead of Rs.1,00,000/- erroneously fixed by the Tribunal.

9. With regard to the compensation awarded by the Tribunal under various other heads viz., Transportation, Extra nourishment, damage to clothing, medical expenses, loss of amenities and pain and suffering are concerned, the compensation awarded by the Tribunal cannot be considered to be in adequate as alleged by the appellant /claimant and therefore, the compensation awarded by the Tribunal under those heads is confirmed by this Court.

10. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of Income *Rs.5,000/- x 6 # Rs.6,500/- x 6	30000 *	39000 #
Transport to hospital	7000	7000
Extra nourishment	4000	4000
Damage to clothing	1000	1000
Medical expenses	60000	60000
Attender charges	5000	10000
Loss of amenities of life	10000	10000
Pain and sufferings	30000	30000
Permanent disability ** Rs.2,000/- x 50% ## Rs.3,000/- x 50%	100000 **	150000 ##
Total compensation	247000	311000

11. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.2,47,000/- to Rs.3,11,000/-, as indicated above. No costs.

12. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.A.C.T.O.P. No.4189 of 2012 on the file of the Motor Accident Claims Tribunal, Court of III Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant / claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

- 1.The III Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.
- 2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+1cc to Mrs.R.Sree Vidya, Advocate Sr No.49413
+1cc to Ms.M.Malar, Advocate Sr No.49401

C.M.A.No.279 of 2014

AKII (CO)
PR (18/11/2021)