

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2811 of 2021

E.Rajendran

...Appellant

Vs

1.V.Gowri

2. The Oriental Insurance Company Limited,
Oriental House,
No.115, Prakasam Salai,
Broadway, Chennai - 1

...Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 04.03.2020 in M.C.O.P.No.6565 of 2014 on the file of Special Sub Court No.1, learned Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya
For R.2 : Mr.J.Chandran

JUDGMENT

Unsatisfied with the compensation award passed by the Motor Accidents Claims Tribunal, Small Causes Court, Chennai in M.C.O.P.No.6565 of 2014 dated 04.03.2020, the appellant/claimant has preferred the present appeal, seeking enhancement.

2. The Tribunal has awarded a total compensation of Rs.2,17,650/-(Rupees Two Lakhs Seventeen thousand Six hundred fifty only) to the appellant/claimant as detailed hereinunder:-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Disability	1,05,000/-
Pain and Sufferings	30,000/-
Transportation	5,000/-
Medical Expenses	28,084/-
Extra Nourishment	15,000/-
Attender Charges	7,750/-
Loss of Earnings	21,000/-
Loss of future prospects	30,000/-
Total Compensation	2,41,834/-

90% of the compensation Rs.2,17,650/-(after deducting 10% contributory negligence)

3. The appellant/claimant has sustained distal one third fracture on right side humerus, clavicle fracture on the right side, 3rd and 7th rib fracture and also sustained other multiple injuries. The Medical Board, which examined the claimant, has assessed the disability at 35%. The nature of the injuries sustained by the appellant/claimant has not been disputed by the respondents before the Tribunal.

4. The Tribunal has awarded disability compensation of Rs.1,05,000/-(Rupees One lakh five thousand only) for 35% disability suffered by the claimant, calculated at Rs.3,000/- per percentage. This Court is in agreement with the said assessment, as the Tribunal has given due consideration to the nature of injuries as well as the year of the accident.

5. The appellant/claimant was hospitalised for a period of 31 days. He also filed discharge summary before the Tribunal, which has been marked as Ex.P.7. The period of hospitalisation has not been disputed by the respondents before the Tribunal. The Tribunal has awarded

compensation of Rs.30,000/- towards pain and sufferings; Rs.5,000/- towards transportation; Rs.15,000/- towards extra nourishment and Rs.7,750/- towards attender charges, which have to be necessarily enhanced, as the Tribunal has not given due consideration to the nature of injuries as well as the long period of hospitalisation of the appellant/claimant.

6. This Court, after giving due consideration of the same, enhances the compensation to the appellant/claimant at Rs.40,000/- towards pain and sufferings; towards Transportation Rs.5,000/-; Towards Extra nourishment Rs.25,000/- and towards loss of amenities Rs.30,000/- which has not been granted by the Tribunal.

7. The Tribunal has awarded a compensation of Rs.28,084/- towards medical expenses, which is supported by medical bills produced by the appellant/claimant before the Tribunal, which is confirmed by this Court.

8. The Tribunal has awarded a lesser compensation of Rs.21,000/- towards loss of earnings, for a period of 3 months calculated at Rs.7,000/-per month. This Court is of the considered view that if the nature of injuries sustained by the appellant/claimant, as referred to supra, was duly considered, the Tribunal ought to have awarded higher compensation towards loss of earning. The appellant/claimant would have been unable to do his regular work atleast for a period of six months. Therefore, this Court enhances the compensation towards loss of earning to Rs.42,000/- (calculated at Rs.7,000/-per month for 6 months), instead of Rs.21,000/-erroneously fixed by the Tribunal.

9. The Tribunal has erroneously awarded compensation of Rs.30,000/-towards future prospects, which the appellant is not legally entitled to as to the nature of injuries sustained by the appellant/claimant does not entitle him to get the compensation. However, instead of awarding loss of future prospects, the Tribunal ought to have awarded a compensation towards future medical expenses to the appellant. After giving due consideration to the nature of injuries sustained, this Court

awards a compensation of Rs.25,000/-(Rupees Twenty Five Thousand only) towards future medical expenses to the appellant/claimant.

10. The Tribunal has awarded a sum of Rs.7750/- towards attender charges. After giving due consideration to the nature of injuries sustained by the appellant/claimant, this Court enhances the compensation of Rs.20,000/- towards attender charges instead of Rs.7,750/-, erroneously fixed by the Tribunal.

11. Under the impugned award, contributory negligence has been fixed on the appellant/claimant at 10%. In view of the fact that the rider of the motorcycle was not possessing a valid licence at the time of the accident, the percentage of contributory negligence fixed by the Tribunal is confirmed by this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal is modified as under by enhancing from Rs.2,17,650/- (Rupees Tow lakhs Seventeen Thousand six hundred fifty only) to Rs.3,01,576/-

(Three lakhs one thousand five hundred seventy six only).

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
Disability	1,05,000/-	1,05,000/-	Confirmed
Pain and Sufferings	30,000/-	40,000/-	Enhanced
Transportation	5,000/-	20,000/-	Enhanced
Medical Expenses	28,084/-	28,084/-	Confirmed
Extra Nourishment	15,000/-	25,000/-	Enhanced
Attender Charges	7,750/-	20,000/-	Enhanced
Loss of Earnings	21,000/-	42,000/-	Enhanced
Loss of future prospects	30,000/-	-	Not granted
Loss of amenities	Not granted	30,000/-	Granted
Future Medical Expenses	Not granted	25,000/-	Granted
Total Compensation	2,41,834/-	3,35,084/-	Enhanced

13. After deducting 10% towards contributory negligence, the total compensation award amount is Rs.3,01,576/- (Rupees Three lakhs one thousand five hundred seventy six only).

14. Accordingly, the civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.2,17,650 /- to Rs.3,01,576/- (Three lakhs one thousand five hundred seventy six only).

15. The second respondent is directed to deposit the compensation amount of Rs.3,01,576/- (Rupees Three lakhs one thousand five hundred seventy 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.6565 of 2014 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.6565 of 2014 to the bank account of the claimant through RTGS within a period of one week thereafter.

No costs.

04.10.2021

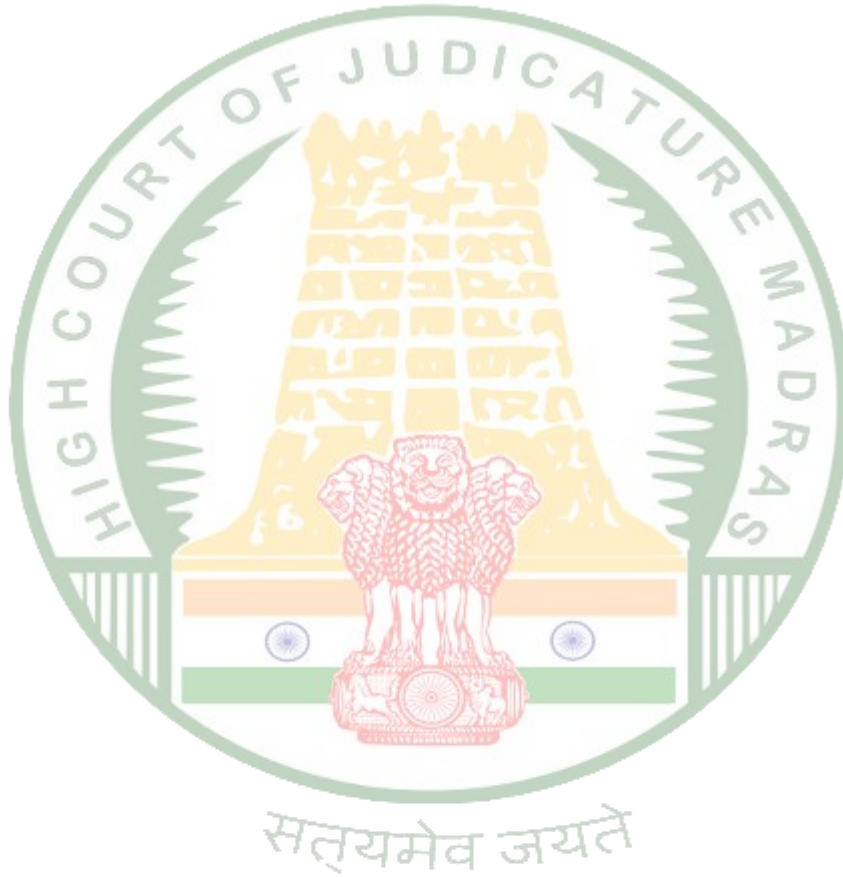
Index: Yes/No
Speaking Order: Yes/No
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To

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- 1.The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai
2. The Section Officer,
V.R.Section, High Court, Madras – 104.



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ABDUL QUDDHOSE.,J

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