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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM:

THE HON'BLE MRS.JUSTICE J.NISHA BANU

Civil Miscellaneous Appeal No.392 of 2012

Nagarajan

... Appellant/Petitioner

Vs.

1. Anandan

2. The Branch Manager,
Oriental Insurance Co. Ltd.,
Branch Office at No.115, 2nd Floor,
Prakasam Salai, Chennai - 600 108.

... Respondents/Respondents

(1st Respondent was set-exparte before trial Court, hence he is not necessary party in the above appeal. Hence dispense with issuing notice to the 1st Respondent.)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 [1] of the Motor Vehicles Act 1988, against the judgment and decree dated 29.03.2011 MACT.O.P.No.3043 of 2008 on the file of the Motor Accidents Claims Tribunal [III Judge, Small Causes Court], Chennai.

For Appellant : Mr.R.Nalliyappan

For R-2 : Mr.P.Kandasamy

*R1- Set as Ex parte before the Tribunal

JUDGMENT

Seeking for an enhancement of the compensation awarded by the Motor Accidents Claims Tribunal [III Judge, Small Causes Court], Chennai in the Award, dated 29.03.2011 in MACT.O.P.No.3043 of 2008, the appellant/ petitioner has preferred the present Civil Miscellaneous Appeal.



2. The case of the claimant before the Tribunal is that on 24.04.2008 at 12.00 hours, when the petitioner was riding motor cycle bearing registration No.TN-07-AZ-8248 at Rajiv Gandhi Road near Modern Bread Company, at that time the first respondent's car bearing registration No.TN-07-AB-3669 came from the same direction in a rash and negligent manner and hit the petitioner, thereby the petitioner sustained grievous injuries. The accident occurred due to the rash driving of the driver of the first respondent. The first respondent, being the owner of the vehicle and the second respondent being the insurer of the vehicle, are liable to compensate the petitioner. The petitioner has claimed a total compensation of Rs.2,00,000/- from the respondents by way of filing the claim petition in MACT.O.P.No.3043 of 2008 before the Motor Accidents Claims Tribunal [III Judge, Small Causes Court], Chennai.

3. Denying the averments in the claim petition, the second respondent filed a counter stating that the claimant has to prove that the vehicle involved in the accident is insured with the second respondent, its registration certificate, fitness certificate and permit and the driver's license. The claimant also has to prove the status, age and monthly income of the claimant, nature of injuries, period of treatment and expenses incurred. Quantum of compensation claimed by the petitioner under various heads is very high. Hence, the second respondent prayed for dismissal of the claim petition with costs.

4. The Court below, after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.68,500/- under the following heads :

S.No.	Particulars	Amount in Rs.
1.	Leave Salary for the treatment period proportionately for 6 days at the rate of Rs.500/- per day	3,000/-
2.	Transportation	3,000/-
3.	Extra Nourishment	3,000/-
4.	Damage to clothes	500/-
5.	Medical Expenses	4,000/-
6.	Pain and suffering	15,000/-



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S.No.	Particulars	Amount in Rs.
7.	Disability of 40% at the rate of Rs.1000/- per disability	40,000/-
	Total	68,500/-

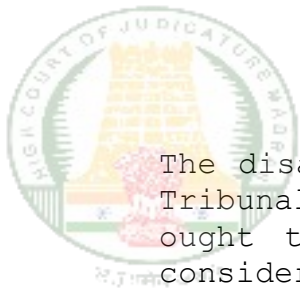
Aggrieved over the same, the appellant/ petitioner has filed this appeal before this Court.

5. The claimant, aggrieved over the quantum of the Award awarded as compensation, has filed this appeal stating that the Tribunal ought not to have awarded a meager amount of Rs.68,500/- for a claim of Rs.2,00,000/- for the injury sustained by the appellant herein, to a tune of 40% disability. The claimant at the age of 53 years had suffered grievous injuries and clavicle fracture and even now, the appellant is taking treatment and the plates fixed in clavicle region have to be removed. Therefore, the claimant submitted that the Tribunal ought to have granted compensation on the head of attendant charges, loss of amenities like happiness, frustration, loss of expectation of life and towards transportation charges. The Tribunal even fixed compensation for disability at Rs.1000/- per disability, when the disability was assessed at 40% and the person is not able to work continuously and his avocation is affected even today. He would also submit that on the whole, the Court below has failed to award just and reasonable compensation without considering the age and injuries sustained by the appellant and prayed for enhancement of compensation.

6. The learned counsel for the second respondent would submit that the Tribunal, after considering both the oral and documentary evidence of both sides, has awarded just compensation and hence, the well considered award of the Court below needs no interference.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. On a perusal of the materials available on record it is seen that the claimant had sustained fracture of right clavicle bone and had undergone surgery, whereby plate and screw were inserted and there is a muscle stiffness and the petitioner is facing difficulty to raise the hand above 80 degree, rotation i.e., flexion and extension reduced to 60 degree and the petitioner is facing difficulty to lift things, thereby 40% partial permanent disability has been assessed by the doctor.



The disability certificate has also been marked as Ex.P.10. The Tribunal ought to have considered the nature of injuries and ought to have awarded compensation on the disability. In my considered opinion, the same is very low and the same can be increased to Rs.3,000/- per percentage and it would come to Rs.1,20,000/-. The Tribunal has awarded a sum of Rs.3000/- for transportation and for extra nourishment Rs.3000/- and the same is increased to Rs.5000/- each for transportation and extra nourishment. Further, it is stated by the appellant that he is still taking treatment for the injuries sustained by him. Hence, towards pain and sufferings, Rs.15,000/- is enhanced to a sum of Rs.20,000/-.

9. Considering all the above circumstances, the award passed by the Tribunal modified as follows:-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced
1	Pain and sufferings	15,000	20,000	enhanced
2	Extra Nourishment and Transportation expenses	6,000	10,000	enhanced
3	Partial Permanent disability	40,000	1,20,000	enhanced
4	Medical Bills	4000	4000	confirmed
5	Leave Salary for the treatment period proportionately for 6 days at the rate of Rs.500/- per day	3000	3000	confirmed
8	Damages to clothes	500	500	confirmed
9	Total	68,500/-	1,57,500/-	Enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.68,500/- is hereby enhanced to Rs.1,57,500/-(Rupees One Lakh Fifty seven Thousand five hundred only). The second respondent is directed to deposit the entire award amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/ Insurance Company is directed to deposit the



enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight 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. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

vrc/sts

To

1. The Motor Accidents Claims Tribunal
III Small Causes Court, Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.8700

Civil Miscellaneous Appeal No.392 of 2012

SSN(CO)

CB(29/04/2022)