



CMA.No.3095 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.3095 of 2013

and

C.M.P.No.1 of 2013

R.Thangapandian

... Appellant/Petitioner

Vs.

1.R.Bhiju Vijay

2.National Insurance Company Ltd.,
No.751, Mount Road,
Chennai - 600002 ... Respondents/ Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicle Act, 1988,
against the Judgement and Decree dated 06.07.2010 and made in MCOP
No.2216 of 2005 on the file of the Motor Accidents Claims Tribunal, III
Small Causes Court, Chennai.

For Petitioner : M/s.P.D.Selvaraj

For Respondents : Mr.S.Vadivel [R.2]

: No appearance [R.1]



WEB COPY



CMA.No.3095 of 2013

JUDGEMENT

The claimant is the appellant before this Court seeking an enhancement of the award passed by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai in MCOP No.2216 of 2005.

2. The appellant had sustained injuries in a road accident on 22.09.2003 and it is his case that he is a working Master in M/s. Siva Restaurant earning a monthly income of Rs.5,000/-. The appellant is aged about 31 years. It is also his case that on 22.09.2003, in the accident he had sustained the following injuries :-

"Fracture of Left Temporal bone fusure with Right frontol Temporal Parietal Thin soft with Fracture of Right humerus and multiple injuries in all over the bodies"

Therefore, he had come forward with the above claim petition.



3. The 1st respondent/ owner of the vehicle had remained ex parte and it was the 2nd respondent/ insurance company that had contested the case.

The main defence was that the petitioner had suddenly crossed the road as a result of which the accident had taken place and therefore, negligence should also be apportioned on the petitioner. That apart, the insurance company had contended that the claim was rather excessive.

4. The Tribunal below after holding that the accident had occurred only on account of the negligence of the driver of the 1st respondent vehicle had awarded a total sum of Rs.1,55,155/- under the following heads.

Sr.No.	Heads	Amounts
1.	Loss of income for 3 moths at the rate of Rs.4000/- p.m	Rs.12,000/-
2.	Transportation	Rs.5,000/-
3.	Extra Nourishment	Rs.5,000/-
4.	Medical expenses	Rs.8,155/-
5.	Pain and suffering	Rs.15,000/-
6.	Disability of 55% at the rate of Rs.2,000/- per disability	Rs.1,10,000/-
Total		Rs.1,55,155/-

Aggrieved by the fact that the compensation is rather low, the appellant is before this Court.



CMA.No.3095 of 2013

WEB COPY

5. Mr.P.D.Selvaraj, learned counsel appearing on behalf of the appellants would contend that the Tribunal has totally overlooked the fact that the doctor who had been examined as P.W.2 and P.W.3 and who had issued the disability certificates Ex.P.12 and Ex.P.14 respectively had assessed the disability at 70%. The Tribunal below has taken the same as 40% partial permanent disability. According to the learned counsel the same is totally erroneous since the petitioner has sustained a fracture of the left Temporal bone fusure with Right frontal Temporal Parietal with a Subdural Hematoma and from the disability certificate Ex.P.12 and Ex.P.14, it is noticed that he has undergone a partial permanent disability since he suffers from headaches and vertigo. He would also submit that the income per percentage has to be enhanced and that no amounts had been given under the head of attender charges and loss of amenities. He would further contend that since the disability is a permanent one the compensation ought to have been calculated under a multiplier method and not on the percentage basis.

6. Mr.S.Vadivel, the learned counsel appearing on behalf of the



insurance company would submit that the disability certificates Ex.P.12 and Ex.P.14 cannot be relied upon since they run contrary to the discharge summaries Ex.P.1 and Ex.P.2. He would seek to sustain the award passed by the Tribunal below.

7. Heard the counsels and perused the records.

8. Admittedly, the petitioner has been an inpatient for a substantial period of time, therefore a sum of Rs.10,000/- has to be given to him under the head of attender charges and a further sum of Rs.20,000/- towards loss of income. The amounts granted under the other heads appeared to be very reasonable. As regards the argument of the learned counsel for the claimant that the compensation had to be calculated on multiplier method the same cannot be countenanced since the Tribunal below has observed that the petitioner has still working and that apart the discharge summary would indicate that the wound has healed and has not impaired the appellant's day to day activities. Therefore, except for the above modification the award remains unaltered.

9. The award is therefore modified to the aforesaid extent as tabulated



CMA.No.3095 of 2013

herein below:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income for 3 moths at the rate of Rs.4000/- p.m	12,000/-	12,000/-	Confirmed
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Extra Nourishment	5,000/-	5,000/-	Confirmed
4.	Medical expenses	8,155/-	8,155/-	Confirmed
5.	Pain and suffering	15,000/-	15,000/-	Confirmed
6.	Disability of 55% at the rate of Rs.2,000/- per disability	1,10,000/-	1,10,000/-	Confirmed
7.	Loss of attender charges	--	10,000/-	Granted
8.	Loss of income	--	20,000/-	Granted
	TOTAL	1,55,155/-	185,155/-	enhanced by Rs.30,000/-

10. Therefore, both the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.185,155/- from Rs.1,55,155/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed. The 2nd respondent/insurance company is directed to deposit the said amount (Rs.185,155 /-) to the credit of MCOP No.2216 of 2005 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai, together with interest @ 7.5% per annum from



CMA.No.3095 of 2013

the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the petitioner is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount if any already withdrawn. The claimant shall pay the Court fee for the enhanced amount, if payable. The Tribunal shall not disburse of the amount till such time as the certified copy showing proof of entire payment of Court fee has been produced. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.09.2022

Index : Yes/No
Internet: Yes/No
shr

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

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



WEB COPY



CMA.No.3095 of 2013

P.T. ASHA, J,

shr

CMA.Nos.3095 of 2013
and
M.P.No.1 of 2013

29.09.2022