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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

C O R A M

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.2563 OF 2019

G.Shanthi

... Appellant/
Petitioner

-Vs-

1. A.Karthick
2. The Oriental Insurance Co. Ltd.,
Motor Third Party Hub,
No.115, Broadway,
Chennai - 600 108.

... Respondents/
Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 22.01.2019 in M.C.O.P.No.7130 of 2014 on the file of the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai.

For Appellant	:	Mr.R.Nalliyappan
For R1	:	Served - No appearance
For R2	:	Mr.N.Sampath

J U D G M E N T

The claimant, seeking an enhancement of the award passed by the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai in M.C.O.P.No.7130 of 2014 dated 24.11.2014, is before this Court.

2. The only ground of challenge is that the claimant ought to have been awarded the compensation under the head of disability adopting the multiplier method. However, the Tribunal had adopted percentage method, which, the learned counsel for the appellant / claimant would submit that, is wrong. He would contend so taking note of the injury sustained by the claimant. He would submit that the Doctor, who had issued the Disability Certificate-Ex.P-8 and who was examined as P.W.2, has clearly deposed about the injury sustained by the



claimant and the discomfort caused to the claimant by reason of the same. He would submit that the Tribunal below has, without assigning any reason, reduced the percentage of disability given by the Doctor, who is the authority to assess the same. He would also submit that only a sum of Rs.3,000/- has been fixed as notional income for every percentage of disability.

3. Per contra, Mr.N.Sampath, learned counsel for the second respondent/Insurance Company would contend that the Doctor, who had assessed the Disability, has not stated that the disability has caused any restriction to the claimant's occupation or to his daily life. In these circumstances, the Tribunal has rightly calculated the compensation for the disability on a percentage basis and he would submit that the Tribunal has also taken into account the Ex.P8/Disability Certificate and thereafter, reduced the disability to an extent of 15%. He would submit that therefore, the compensation awarded under the head of disability, is fair and reasonable.

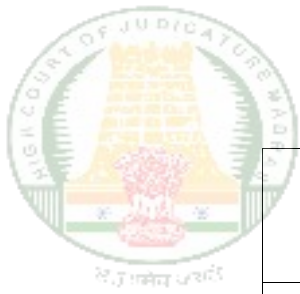
4. Heard the learned counsel for the appellant and the learned counsel for the second respondent/Insurance Company and perused the materials available on record. Though the first respondent was served with notice, there is no representation for the respondent either in person or through counsel

5. Considering the limited scope of the appeal, it would suffice, if this Court considers the discussion of the Tribunal below on the quantum of compensation under the head of disability. The Doctor, who was examined as P.W.2 and who had issued the disability certificate, has mentioned that the claimant had sustained the following injury.

"Compression # L2 Vertibra pointing Disc bulge, L4, L5 IV space"

6. The X-ray report and O.P. chit etc., have been filed before the Tribunal. The Tribunal, while reducing the percentage of disability granted by an expert, has not given any reasons except for stating that Ex-8 is not an indisputable document. However, the learned Judge has not stated as to how the Disability Certificate is being disputed.

7. Taking into account the nature of the injury, it would be just that the entire percentage be taken for calculating the quantum under the head of disability. The award of the Tribunal therefore stands modified to the extent of granting compensation under the head of disability as follows:-



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Heads	Amount by the Tribunal in Rs.	Amount Awarded by this Court in Rs.
Disability	45,000 (3,000x 15)	75,000 (3,000x25)
Pain and suffering	15,000	15,000
Extra nourishment	5,000	5,000
Transport to Hospital	2,000	2,000
Damages to clothes	500	500
Medical expenses	7,430	7,430
Loss of Income	7,000	7,000
Loss of Amenities	10,000	10,000
Total	91,930	1,21,930

8. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from Rs.91,930.00 to Rs.1,21,930.00. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.7130 of 2014 along with interest at the rate of 7.5% per annum from 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 judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srn



1. The VI Small Causes Judge,
The Motor Accident Claims Tribunal
(VI Small Causes Court), Chennai.

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.23561
+1cc to Mr.N.Sampath, Advocate, S.R.No.23365

C.M.A.No.2563 of 2019

BR(CO)
PM/12/05/2022