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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.4078 of 2019

Govindan

...Petitioner/Appellant

Vs

1.Raveendiran

2.The Divisional Manager,
United India Insurance Co.Ltd.,
AR Plaza, No.35, 36, & 37
45 Feet Road Extension, Balaji Nagar,
Puducherry.

...Respondents/ Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and Judgment dated 11.10.2018 made in M.A.C.T.O.P.No.817 of 2016 on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry.

For Petitioner : Mr.T.Ananthasekar

For Respondents : Mr.M.J.Vijayaraghavan [R2]

No Appearance [R1]

JUDGEMENT

The claimant is before this Court seeking an enhancement of the compensation. It is the contention of the claimant that although the Medical Board has assessed the permanent disability of the petitioner at 20% the Tribunal has failed to consider the same and has only awarded sum of Rs.60,000/- under the said head. He would further submit that only a meagre amounts have been given under the head of pain and sufferings, attender charges etc.

2. The learned counsel for the respondent/insurance company would fairly concede that as per the Medical Board's assessment there has been an amputation of the 4th and 5th toe which suffered a crush injury apart from the fractures to the 1st, 2nd & 3rd MTs - right foot. He would also concede that it is



a permanent disablement. Further the Tribunal has only fixed a sum of Rs.3,000/- as compensation for each percentage of disability.

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3. Heard the learned counsels and perused the records.

4. The Tribunal below has extracted the contents of Ex.C.1, which reproduced as follows:

"In Ex.C1 the Medical Board has assessed the disability of the petitioner at 20% and opined crush injury right foot 4th, 5th toe amputation, fracture 1st 2nd 3rd Mts- right foot. Considering the nature of injuries sustained and the Medical Board Certificate, this Tribunal assessed the petitioner's disabilities as 20% for the purpose of calculation of compensation."

5. Therefore it is clearly evident that the disability of 20%, particularly the amputation of the toe has to definitely be assessed on a multiplier method. The disability can be assessed at 5%. therefore, for the purpose of calculating the compensation for a permanent disablement it is necessary to take into account the income of the claimant while awarding the compensation under the multiplier method. A sum of Rs.7,500/- can be safely taken as the notional income of the claimant to which a multiplier of '18' has to be added and disability of 5% should also be taken into account.

Therefore, the amount under the head of permanent disability would work out as follows:

$\text{Rs.7,500} \times 12 \times 18 \times 5\% = \text{Rs.81,000/-}.$

6. The other disability is the fracture to the 1st, 2nd and 3rd Mts - right foot which can be assessed at 15% since this is not a partial permanent disablement affecting the future prospects, the compensation can be worked out on a percentage basis as taken by the Tribunal below i.e., $\text{Rs.3,000} \times 15 = \text{Rs.45,000/-}.$ Therefore, the total compensation under the head of permanent disability would work out to a sum of Rs.1,26,000/-. The loss of compensation under the head of loss of income has been calculated for 4 months at the rate of 10,000/- per month, since this Court has taken the notional income at Rs.7,500/- the amount under this head would be reduced to a sum of Rs.30,000/-.



7. Therefore, the compensation would be enhanced and the revised working is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent disability	60,000/-	1,26,000/-	Enhanced
2.	Pain and Sufferings	45,000/-	45,000/-	Confirmed
3.	Medical expenses	---	---	Confirmed
4.	Loss of Income	40,000/-	30,000/-	Reduced
5.	Rich and nutritious food	25,000/-	25,000/-	Confirmed
6.	Attender charges	10,000/-	10,000/-	Confirmed
7.	Transport expenses	10,000/-	10,000/-	Confirmed
	TOTAL	1,90,000/-	2,46,000/-	Enhanced by Rs.56,000/-

8. Therefore, the Civil Miscellaneous Appeal is allowed and the compensation of Rs.1,90,000/- awarded by the Tribunal is hereby enhanced to a sum of Rs.2,46,000/- 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 Insurance Company is directed to deposit the said amount (Rs.2,46,000 /-) to the credit of M.A.C.T.O.P.No.817 of 2016 together with interest @ 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 Judgement. On such deposit being made, the appellant is permitted to withdraw the 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 within a period of two weeks from the date of receipt of a copy of this Judgement. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1.The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Puducherry.

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

+1 CC to M/s.T. Ananthasekar, Advocate sr 15616.

C.M.A. No.4078 of 2019

JPII (CO)
SP(30/05/2022)