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C.M.A.No.1792 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1792 of 2022

Sathishkumar

... Appellant

Vs.

1.Boopathi

2. The National Insurance Company Ltd.,
Divisional Office - I, LRN Colony,
Saradha College Road, Salem - 636 007.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Award and Decree dated 25.11.2019 made in M.C.O.P. No.1566 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents : Ms.R.Sree Vidhya
for R2

R1 - No Appearance



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C.M.A.No.1792 of 2017

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation. The Tribunal under the impugned award directed the second respondent Insurance Company to pay a total compensation of Rs.17,98,851/- to the appellant / claimant for the injuries sustained by him as a result of an accident caused by a vehicle insured with the second respondent Insurance Company as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Pain and Sufferings	90,000
Medical expenses	1,37,051
Transport Expenses	40,000
Extra Nutrients	40,000
Attender charge	40,000
Damages to clothing	1,000
Loss of amenities	90,000
Loss of Income	13,60,800
Total	17,98,851

2. The appellant / claimant has sustained Type II Open Fracture shaft of distal 1/3 (L) forearm, Brachial Plexus Palsy (L) Upper Limb as a result of an accident caused by a vehicle insured with the second respondent. The nature of injuries sustained by the appellant / claimant has not been disputed



by the second respondent Insurance Company as seen from the evidence available on record.

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3. The Tribunal has also rightly held that the second respondent Insurance Company is liable to pay compensation as the appellant / claimant had sustained injuries only as a result of an accident caused by a vehicle insured with the second respondent. However, in this appeal, the appellant / claimant seeks for enhancement of compensation on the ground that the compensation awarded by the Tribunal is low and it is not a just compensation.

4. The Tribunal has fixed the notional monthly income of the appellant / claimant at Rs.5,000/- erroneously though the accident happened in the year 2013. It is well established that for an accident that happened in the year 2013 and that too when the appellant / claimant has claimed in the claim petition that he was earning Rs.13,000/- per month, the fixation of notional monthly income of the appellant / claimant at Rs.5,000/- is too low.

5. This Court after giving due consideration to the avocation of the



appellant / claimant and the year of the accident, re-assesses the notional monthly income of the appellant / claimant at Rs.9,000/- instead of Rs.5,000/- erroneously fixed by the Tribunal.

6. The Medical Board has assessed the disability of the appellant / claimant at 90% as seen from the medical report, which has been marked as Ex.C1 before the Tribunal. Since left hand of the appellant / claimant has become useless on account of the injuries sustained by him, the Tribunal has rightly taken the entire 90% as the appellant's / claimant's disability for the purpose of assessing the loss of earning capacity of the appellant / claimant. The respondents have also not filed any appeal, aggrieved by the findings of the Tribunal with regard to the assessment of the appellant's / claimant's disability.

7. Since the notional monthly income of the appellant / claimant is enhanced to Rs.9,000/- by this Court from Rs.5,000/- erroneously fixed by the Tribunal, this Court enhances the loss of earning capacity of the appellant / claimant from Rs.13,60,800/- to Rs.24,49,440/- as detailed hereunder:



<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
Loss of Income	[5,000 + (future prospects 40% i.e., 5,000 x 40/100 = 2,000)] =7,000 x 12 x 18 x 90%	[9,000 + (future prospects 40% i.e., 9,000 x 40/100 = 12,600)] =12,600 x 12 x 18 x 90%
Total	13,60,800	24,49,440

8. In so far as the compensation awarded by the Tribunal under various other heads is concerned, this Court is of the considered view that the same is a just compensation as the Tribunal has rightly given due consideration to the avocation, year of the accident, the nature of injuries and the period of the claimant's hospitalization. While assessing the compensation, excepting for modifying the compensation awarded to the appellant / claimant towards loss of earning capacity from Rs.13,60,800/- to Rs.24,49,440/-, the compensation awarded by the Tribunal under various other heads is a just compensation which does not call for any interference by this Court.

9. For the foregoing reasons, the compensation payable by the second respondent Insurance Company is re-worked in the following manner:



<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
Pain and Sufferings	90,000	90,000
Medical expenses	1,37,051	1,37,051
Transport Expenses	40,000	40,000
Extra Nutrients	40,000	40,000
Attender charge	40,000	40,000
Damages to clothing	1,000	1,000
Loss of amenities	90,000	90,000
Loss of Income	13,60,800	24,49,440
Total	17,98,851	28,87,491

10. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.17,98,851/-** to **Rs.28,87,491/-**. The second respondent/insurance company is directed to deposit the enhanced award amount of **Rs.28,87,491/-**, after deducting the amount already deposited, if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. No.1566 of 2014** on the file of the **Motor Accidents Claims Tribunal, Special Subordinate Judge, Salem**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

11. The appellant/claimant is permitted to withdraw the said amount, once it is deposited by the second respondent/Insurance Company, by filing



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an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. No.1566 of 2014** to the bank account of the appellant directly through NEFT / RTGS, within a period of **one week** thereafter. No costs.

18.06.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, Special Subordinate Judge, Salem.
2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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