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C.M.A. No.826 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.826 of 2020

Mana

.... Appellant

vs.

1. M. Gurumurthi
2. The United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building,
No.134, Greems Road,
Chennai – 600 006.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 19.11.2019 in M.C.O.P. No.7930 of 2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge No.II, Small Causes Court), Chennai.

For Appellant	:	Mr.R. Nalliyappan
For Respondents	:	R1 – Dismissed vide Court order dt.21.12.2023 Mr.M.J. Vijayaraghavan for R2

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 19.11.2019 passed by the



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Special Sub Court – II, (Motor accidents Claims Tribunal), Small Causes

Court, Chennai, in M.C.O.P.No.7930 of 2015.

2. The Tribunal under the impugned award directed the 2nd respondent /Insurance Company to pay the appellant / claimant (injured) a compensation of Rs.78,700/- together with interest and costs, as detailed hereunder :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Permanent Disability	21,000.00
Pain and Suffering	7,000.00
Transportation	3,000.00
Extra Nutrition	5,000.00
Damages to clothing	1,000.00
Attender charges	3,000.00
Loss of Estate	7,000.00
Loss of Income	25,000.00
Medical expenses	3,689.83
Mental Agony	3,000
Total	78,689.83
Rounded to	78,700.00

3. Heard Mr.R. Nalliyappan, learned counsel for the appellant /



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claimant and Mr.M.J. Vijayaraghavan, learned counsel for the 2nd respondent / Insurance Company.

4. This Court has perused and examined the impugned award passed by the Tribunal.

5. The appellant / claimant has sustained fracture of Left Leg Tibia and Contusion over the hip. The nature of injuries sustained by the appellant / claimant has not been disputed by the respondents as seen from the evidence available on record. The Doctor had assessed the disability of the appellant / claimant at 25%. Since he was a private Doctor, who had not treated the appellant / claimant, the Tribunal has reduced the disability of the appellant / claimant to 7% and based on the said assessment, the disability compensation was fixed by the Tribunal at the rate of Rs.3,000/- per percentage of disability, for the 7% disability assessed by the Tribunal. However, this Court is of the considered view that the reduction of disability to 7% by the Tribunal is too low, despite the fact that a private Doctor had assessed the appellant's / claimant's disability at 25%. The appellant / claimant had also deposed that on account of the fracture of left leg tibia bone, he was admitted in Kasthuri



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Hospital, wherein the Doctors have advised him to perform surgery for the said fracture. According to the appellant / claimant since he was not having sufficient amount to perform the surgery, he voluntarily got discharged from the hospital and took treatment in Puttur. According to the appellant / claimant only based on his disability, the private Doctor had assessed his disability at 25%. The Tribunal ought to have taken into consideration the aforementioned contentions of the appellant / claimant before assessing the appellant's / claimant's disability at 7%. No contra evidence has also been produced by the respondents to disprove the deposition of the appellant / claimant before the Tribunal. Since the appellant / claimant was not examined by the competent Medical Board and was examined only by a non-treated Doctor, this Court cannot accept the entire 25% disability assessed by the Doctor. However, this Court is of the considered view that the Tribunal should have given due consideration to the deposition of the appellant / claimant which has not been controverted through any oral or documentary evidence by the respondents and therefore, if the same was considered, the Tribunal could not have assessed the disability of the appellant / claimant at 7%, which is too low. After giving due consideration to the evidence available on record as well as the deposition of the appellant / claimant with regard to



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the nature of his injuries and the treatment he had taken, this Court, instead of fixing the disability of the appellant / claimant at 7% which is too low, enhances the same to 15%. Accordingly, the disability of the appellant/ claimant is fixed by this Court at 15%. The accident happened in the year 2015. The Tribunal has awarded the disability compensation to the appellant / claimant at Rs.3,000/- per percentage of disability which in the considered view of this Court is also low. It is settled practice that for an accident that happened in the year 2015, the disability compensation is awarded at the rate of Rs.5,000/- per percentage of disability. Since the disability has been re-assessed by this Court to 15% and the disability compensation is directed to be paid to the appellant/ claimant at Rs.5,000/- per percentage of disability, this Court re-assesses the disability compensation payable to the appellant/ claimant at Rs.75,000/-, instead of Rs.21,000/- erroneously fixed by the Tribunal.

6. Insofar as the compensation awarded by the Tribunal under various other heads viz., Pain and Suffering, Transportation, Extra nourishment, Damages to clothing, Attender charges, Loss of estate, Loss of income, Medical expenses, Mental agony are concerned, the compensation awarded by the Tribunal cannot be considered to be



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inadequate as alleged by the appellant /claimant and therefore, the compensation awarded by the Tribunal under those heads is confirmed by this Court.

7. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

<i>Heads</i>	<i>Amount awarded by the tribunal</i>	<i>Amount awarded by this Court</i>
Permanent Disability * 7% x Rs.3,000/- # 15% x Rs.5,000/-	21,000.00 *	75,000.00 #
Pain and Suffering	7,000.00	7,000.00
Transportation	3,000.00	3,000.00
Extra Nutrition	5,000.00	5,000.00
Damages to clothing	1,000.00	1,000.00
Attender charges	3,000.00	3,000.00
Loss of Estate	7,000.00	7,000.00
Loss of Income	25,000.00	25,000.00
Medical expenses	3,689.83	3,689.83
Mental Agony	3,000.00	3,000.00
Total	78,689.83	1,32,689.83
Rounded to	78,700.00	1,32,700.00

8. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.78,700/- to



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Rs.1,32,700/-, as indicated above. No costs.

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9. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.7930 of 2015 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.II, Small Causes Court), Chennai, within a period of four 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 thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

01.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.

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To

1. The Special Sub Judge No.II,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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