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C.M.A.No.1871 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1871 of 2021

C.Sivalingam

.. Appellant

Vs.

1.Yogesh Addlapalli

2.The Branch Manager,
Royal Sundaram General Insurance Company Ltd.,
Registered Office No.21,
Patullos Road,
Chennai - 600 002.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 07.03.2020 made in M.C.O.P. No.1454 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.S.P.Yuaraj

For Respondents : Mr.M.B.Gopalan Associates for R2
R1-Service awaited

JUDGMENT



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This appeal has been filed by the appellant/claimant seeking enhancement of compensation.

2.The appellant/claimant sustained crush injuries as a result of an accident caused by a vehicle, insured with the second respondent/ Insurance Company.

3.The Tribunal, under the impugned award, has directed the second respondent/Insurance Company to pay a total compensation of Rs.5,04,036/- to the appellant/claimant as detailed hereunder:

S.Nos.	Heads	Amount awarded by the Tribunal
1.	Loss of earning capacity	Rs.2,74,890.00
2.	Medical expenses	Rs.1,55,146.00
3.	Transportation expenses	Rs. 10,000.00
4.	Extra nourishment and attender charges	Rs. 15,000.00
5.	Pain and suffering	Rs. 24,000.00
6.	Social amenities	Rs. 24,000.00
7.	Damages to clothing and articles	Rs. 1,000.00
	Total	Rs.5,04,036.00

4.The accident happened on 01.04.2019. The appellant/claimant



has pleaded in his Claim Petition that he was a Bus Driver at the time of the accident. He did not produce any documentary evidence before the Tribunal to prove his monthly income. Therefore, the Tribunal, on notional basis, has determined his monthly income at Rs.8,500/-. The appellant/claimant has produced his heavy vehicle driving licence, which has been marked as Ex.P.9 before the Tribunal.

5.This Court is of the considered view that the assessment of the notional monthly income of the appellant/claimant at Rs.8,500/- is low, considering the year of the accident, which happened in the year 2019. Since the appellant/claimant has produced his heavy vehicle driving licence though he has not let in additional evidence with regard to his notional monthly income, this Court deems it fit to enhance the notional monthly income of the appellant/claimant as fixed by the Tribunal from Rs.8,500/- to Rs.12,000/-, after giving due consideration to the year of the accident and after giving due consideration to the fact that the appellant/claimant has produced his heavy vehicle driving licence, which has been marked as Ex.P.9 before the Tribunal.

6.Admittedly, the appellant/claimant has sustained grievous injuries in his right foot and he was 62 years on the date of the accident.



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Therefore, the question of fixing the notional income as claimed by the learned counsel for the appellant/claimant for more than Rs.12,000/- per month does not arise as it will be difficult for a person of that age to be employed as a driver in the normal course. The appellant/claimant has sustained crush injuries in his right foot. He was in the hospital for 12 days. Having sustained crush injuries in his right foot, he would have engaged an Attender to take care of his needs. He would also have suffered pain and suffering on account of the crush injuries. Though the Tribunal has awarded compensation towards Pain and suffering and Attender charges, the compensation awarded is less and it has to be necessarily enhanced considering the fact that the appellant/claimant has sustained crush injuries in his right foot and his age was 62 years at the time of the accident.

7.This Court, therefore, enhances the compensation towards Pain and suffering at Rs.50,000/- and towards Extra Nourishment charges and Attender charges at Rs.25,000/- each instead of the consolidated compensation of Rs.15,000/- awarded by the Tribunal towards Extra Nourishment and Attender charges.



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8.In view of the fixation of the notional monthly income of the appellant/claimant by this Court at Rs.12,000/-, the compensation payable to the appellant/claimant towards Loss of earning capacity is fixed at Rs.3,88,080/- instead of Rs.2,74,890/- erroneously fixed by the Tribunal. $(12000+10\%=13200 \times 12 \times 35/100 \times 7 = \text{Rs.}3,88,080/-)$

9.Insofar as the compensation awarded by the Tribunal under various other heads, i.e., Medical bills, Transportation, Social amenities, Damage to clothing and articles are concerned, this Court is of the considered view that the compensation awarded under those heads is a just compensation, which does not call for any interference by this Court.

10.For the foregoing reasons, the compensation awarded by the Tribunal to the appellant/claimant is enhanced to Rs.6,78,226/- from Rs.5,04,036/- is detailed hereunder:

S.Nos.	Heads	Amount awarded by this Court
1.	Loss of earning capacity	Rs.3,88,080.00
2.	Medical expenses	Rs.1,55,146.00



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S.Nos.	Heads	Amount awarded by this Court
3.	Transportation expenses	Rs. 10,000.00
4.	Extra nourishment	Rs. 25,000.00
5.	Pain and suffering	Rs. 50,000.00
6.	Social amenities	Rs. 24,000.00
7.	Damages to clothing and articles	Rs. 1,000.00
8.	Attender charges	Rs. 25,000.00
	Total	Rs.6,78,226.00

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount. The second respondent/insurance company is directed to deposit the enhanced award amount of Rs.6,78,226/-, 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 costs to the credit of M.C.O.P. No.454 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri within a period of four weeks from the date of receipt of a copy of this judgment.

12. The appellant/claimant is permitted to withdraw the said amount, once it is deposited by the second respondent/Insurance Company, by filing an appropriate application. On such application



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being made, the Tribunal shall transfer the amount lying to the credit of
M.C.O.P. No.454 of 2019 to the bank account of the appellant/claimant
directly through RTGS, within a period of one week thereafter. No costs.

11.06.2024

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Internet: Yes/No

Speaking Order/Non-Speaking Order



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ABDUL QUDDHOSE, J.

vga

To

- 1.The Motor Accidents Claims Tribunal,
Special Sub Judge, Krishnagiri.
2. The Section Officer,
V.R. Section,
High Court, Madras.

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