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C.M.A.No.1769 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 04.07.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.1769 of 2021

Prabhu

.. Appellant

Vs

1.S.Ramesh

2.Vasuki

3.Reliance General Insurance Company Ltd.,
Omalur Main Road,
Swarnapuri, Salem – 636 004.

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 21.07.2016, passed in M.C.O.P.No.135 of 2011, on the file of the Motor Accident Claims Tribunal, 4th Additional District Judge, Bhavani, Erode District.

For Appellant

: Mr.G.Kulanthaivel

For R3

: Ms.C.Bhuvanasundari

For R1 & R2

: No Appearance

JUDGMENT



C.M.A.No.1769 of 2021

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

2. The Tribunal, under the impugned award, directed the third respondent Insurance Company to pay the claimant a compensation of Rs.1,68,100/- as detailed hereunder:-

Towards 45% disability	- Rs.90,000/-
Medical expenses	- Rs.1,100/-
Extra nourishment	- Rs.10,000/-
Pain and suffering	- Rs.40,000/-
Transport expenses	- Rs.10,000/-
Attender fee	- Rs.5,000/-
Loss of income during treatment	- Rs.12,000/-
Total	- Rs.1,68,100/-

3. The claimant had sustained frontal bone fracture (head injury), as a result of the accident caused by a vehicle insured with the third respondent Insurance Company. The private doctor, who had issued the disability certificate, which has been marked as Ex.P12, has assessed the disability at 66%. However, the Tribunal, without any basis, has reduced the disability of the claimant to 45% and has awarded the disability compensation of Rs.90,000/- calculated at Rs.2,000/- per percentage of



C.M.A.No.1769 of 2021

disability for 45% disability.

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4. This Court is of the considered view that since the claimant had sustained head injury and had deposed that he was hospitalized for a period of 40 days though no documentary evidence is available, the Tribunal ought to have accepted the disability certificate issued by the doctor and should have fixed the disability at 66% as fixed by the doctor. No reasons has been assigned in the impugned award as to how the Tribunal has reduced the disability from 66% to 45%.

5. Eventhough the appellant/claimant has filed this appeal seeking for adoption of multiplier method, this Court is rejecting such contention in view of the fact that no evidence has been produced before the Tribunal to prove that on account of the injuries sustained by him, he had lost his earning capacity. The Tribunal has rightly awarded the disability compensation based on percentage basis. The only error committed by the Tribunal is to reduce the percentage of disability of the claimant from 66% fixed by the doctor to 45% and thereby, the Tribunal has also erroneously awarded compensation for the disability at Rs.2,000/- per percentage of disability, which is on the lower side. Since the accident



C.M.A.No.1769 of 2021

happened in the year 2011, it is well settled practice to fix the disability compensation at Rs.3,000/- per percentage of disability. Since the disability of the claimant is fixed at 66% by this Court and this Court is also assessing the disability compensation to be awarded to the claimant at Rs.3,000/- per percentage of disability, the disability compensation is enhanced to Rs.1,98,000/- from Rs.90,000/- erroneously fixed by the Tribunal.

6. The claimant has pleaded in the claim petition that he was a welder at the time of the accident. However, no documentary evidence has been produced by the claimant before the Tribunal to prove that he was a welder. The Tribunal has fixed notional monthly income of the claimant at Rs.4,000/- for an accident that happened in the year 2011. Even on notional basis, the fixation of the monthly income of the claimant at Rs.4,000/- for an accident happened in the year 2011 is low, necessarily, it has to be enhanced to Rs.6,500/- from Rs.4,000/-. Accordingly, the loss of income for the period of three months (treatment period) is enhanced to Rs.19,500/- (6500 x 3) from Rs.12,000/- erroneously awarded by the Tribunal.



C.M.A.No.1769 of 2021

7. Insofar as the compensation awarded by the Tribunal under various other heads are concerned, there is no scope for further enhancement by this Court as the same are just compensation.

8. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

66% disability	- Rs.1,98,000/-
Medical expenses	- Rs.1,100/-
Extra nourishment	- Rs.10,000/-
Pain and suffering	- Rs.40,000/-
Transport expenses	- Rs.10,000/-
Attender fee	- Rs.5,000/-
Loss of income during treatment (3 months)	- Rs.19,500/-
Total	- Rs.2,83,600/-

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned award passed by the Tribunal in M.C.O.P.No.135 of 2011, dated 21.07.2016, is modified by directing the third respondent Insurance Company to deposit the entire award amount of Rs.2,83,600/- together with interest at 7.5% per annum from the date of claim petition till the date of realization, to the credit of M.C.O.P.No.135 of 2011 on the



C.M.A.No.1769 of 2021

file of Motor Accident Claims Tribunal, 4th Additional District Judge, Bhavani, Erode District, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the entire award amount as ordered in this judgment along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimant. No Costs.

04.07.2024

Index: yes/no
Neutral citation: yes/no
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To

Motor Accident Claims Tribunal,
4th Additional District Judge,



Bhavani.

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C.M.A.No.1769 of 2021

ABDUL QUDDHOSE,J.

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C.M.A.No.1769 of 2021

C.M.A. No.1769 of 2021

04.07.2024