



WEB COPY



C.M.A. No.787 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.787 of 2021

Murugesan

.... Appellant

vs.

1. Santhanakumar

2. The Manager,
Bharathi AXA General Insurance Company Ltd.,
No.965, 2nd Floor,
Avinashi Road,
Coimbatore.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the compensation amount awarded in the judgment and decree dated 06.09.2017 made in M.C.O.P. No.367 of 2016 on the file of the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr. S. Panneer Selvam

For Respondents : Mr. B. Sivakollappan for R2
No appearance for R1

JUDGMENT



C.M.A. No.787 of 2021

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

2. Heard Mr.S. Panneerselvam, learned counsel for the appellant / claimant and Mr.B.Sivakollappan, learned counsel for the 2nd respondent / Insurance Company.

3. The Tribunal under the impugned award has directed the 2nd respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.2,37,000/- for the injuries sustained by the appellant / claimant as a result of an accident caused by the vehicle owned by the 1st respondent and insured with the 2nd respondent / Insurance Company. The details of the compensation awarded by the Tribunal to the claimant are as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Disability (40%)	1,20,000/-
Pain and suffering	40,000/-
Medical expenses	47,000/-
Loss of earning during treatment period	15,000/-
Extra nourishment	10,000/-
Attender charges	5,000/-
Total	2,37,000/-



WEB COPY

4. Being unsatisfied by the quantum of compensation awarded under the impugned award, the appellant seeks for enhancement of compensation.

5. The appellant / claimant had sustained the following injuries :-

i) Comminuted, displaced neck of Fibula Fracture

ii) Segmental fracture of Tibia at Distal 1/3rd right leg.

The Medical Board had assessed the disability of the appellant / claimant at 40% for the injuries sustained by him. The nature of the injuries sustained by the appellant / claimant and the assessment of the disability by the Medical Board has not been disputed by the 2nd respondent / Insurance Company. The Tribunal under the impugned award has assessed the disability compensation on percentage basis and has awarded a disability compensation of Rs.1,20,000/- at Rs.3,000/- per percentage of disability. The accident happened in the year 2016. This Court is of the considered view that the disability compensation awarded by the Tribunal to the appellant / claimant at Rs.3,000 per percentage of disability is low and it has to be enhanced to Rs.5,000/- per percentage of disability since the accident happened in the year 2016. Accordingly, the disability compensation payable to the appellant / claimant is enhanced to



C.M.A. No.787 of 2021

Rs.2,00,000 calculated at Rs.5,000/- per percentage of disability for the 40% disability suffered by the appellant instead of Rs.1,20,000/- erroneously fixed by the Tribunal calculated at Rs.3,000/- per percentage of disability.

6. Insofar as the compensation awarded by the Tribunal under various other heads viz., Pain and suffering, Medical Expenses, Extra nourishment and Attender charges are concerned, the same is a just compensation and does not call for any interference by this Court.

7. However, the compensation awarded by the Tribunal towards loss of earning during the treatment period at Rs.15,000/- is low and it has to be enhanced. The appellant was hospitalised for a period of seven days and has sustained both bone fracture and his disability has been assessed by the Medical Board at 40%. Therefore, this Court is of the considered view that the Tribunal has erroneously awarded lesser compensation towards loss of earning taking the treatment period only for a period of three months, though the appellant / claimant would have been unable to do his regular employment for a minimum period of four months. Therefore, this Court enhances the compensation payable to the appellant / claimant towards loss of earning during the treatment period from Rs. 15,000/- to Rs.20,000/-, i.e., Rs.5,000/-p.m. for a period



C.M.A. No.787 of 2021

of four months.

WEB COPY

8. The Tribunal has erroneously failed to award any compensation to the claimant / appellant towards transportation, which he is legally entitled to. Therefore, this Court awards a compensation of Rs.5000/- towards transportation.

9. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Disability (40%)	1,20,000/-	2,00,000/-
Pain and suffering	40,000/-	40,000/-
Medical expenses	47,000/-	47,000/-
Loss of earning during treatment period	15,000/-	20,000/-
Extra nourishment	10,000/-	10,000/-
Attender charges	5,000/-	5,000/-
Transportation	-	5,000/-
Total	2,37,000/-	3,27,000/-

10. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.2,37,000/- to Rs.3,27,000/- as indicated above. No costs.

11. The second respondent / Insurance Company is directed to



C.M.A. No.787 of 2021

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.367 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Tiruvannamalai, 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.

25.06.2024

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

ABDUL QUDDHOSE, J.

vsi2

To
1. The Special Sub Judge,
Motor Accident Claims Tribunal,



C.M.A. No.787 of 2021

Tiruvannamalai.

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

C.M.A. No.787 of 2021

25.06.2024