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C.M.A. No.2715 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2715 of 2022

R. Ramesh

.... Appellant

vs.

1. K. Gandhi
2. United India Insurance Company Ltd.,
Vellakovil.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.09.2021 made in M.C.O.P. No.826 of 2018 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kangayam.

For Appellant	:	Mr.D. Rameshkumar
For Respondents	:	Ms.I. Malar for R2 R1 – Ex-parte

JUDGMENT

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

2. Heard Mr.D. Rameshkumar, learned counsel for the appellant / claimant and Ms. I. Malar, learned counsel for the 2nd respondent / Insurance Company. The 1st respondent remained ex-parte both before



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the Tribunal and before this Court.

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3. The Tribunal under the impugned award has directed the 2nd respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.11,40,000/- 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 at Rs.3,000 x 90%.	2,70,000
Pain and suffering	50,000
Transportation	13,000
Medical expenses	7,74,000
Extra nourishment attender charges	15,000
Loss of Income 9 x 2000	18,000
Total	11,40,000

4. The appellant / claimant sustained grievous injuries on his right leg, right arm and all over his body. He was hospitalised on two occasions, initially from 16.06.2017 to 20.06.2017 at Rex Hospital, Coimbatore and later on, he was shifted to ESI Hospital, Coimbatore,



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wherein, he was hospitalised from 20.06.2017 to 12.07.2017. He was also treated as an outpatient at Ganga Hospital, Coimbatore from 13.07.2017 for a period of six months. The Medical Board has assessed the disability of the appellant / claimant at 90%. The Tribunal under the impugned award has awarded the disability compensation of Rs.2,70,000/-, calculated at Rs.3,000/- per percentage of disability for the 90% disability suffered by the appellant / claimant, which in the considered view of this Court is low. Having sustained grievous injuries and on account of the long period of his hospitalisation, the Tribunal ought to have adopted the multiplier method for assessing the loss of earning capacity of the appellant / claimant. It ought not to have awarded the disability compensation on percentage basis. This Court had also directed the appellant / claimant to be present before this Court to examine his present medical condition. As directed by this Court, the appellant / claimant was also present Yesterday(09.07.2024). The appellant / claimant is able to walk only with the support of a crutch. Even though the accident happened in the year 2017, even after a lapse of seven years, the appellant / claimant has not re-gained his normalcy and continues to walk only with the support of a crutch. Even though the Medical Board had assessed the disability of the appellant / claimant at



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90%, the said assessment is not with regard to the functional disability of the appellant / claimant. Certainly, the appellant / claimant would have lost his earning capacity due to the grievous injuries sustained by him as a result of an accident caused by the vehicle insured with the 2nd respondent / Insurance Company and his medical condition continues to be grim. The Tribunal ought to have considered the grievous injuries sustained by the appellant / claimant, which has resulted in permanent disability and ought to have adopted the multiplier method for assessing the loss of earning capacity of the appellant / claimant. The appellant / claimant was a Machine Operator at the time of the accident. Though no documentary evidence was produced by him before the Tribunal to prove his avocation, there is also no contra evidence produced by the 2nd respondent / Insurance Company to disprove the appellant / claimant's avocation. Since this Court is of the considered view that the Tribunal ought to have adopted the multiplier method, this Court will have to now assess the functional disability of the appellant / claimant as a result of the injuries caused to him by the vehicle insured with the 2nd respondent / Insurance Company. This Court, after considering the long period of his hospitalisation and the nature of treatment taken by the appellant / claimant and the surgeries performed on him and after examination of the



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appellant / claimant, in-person, is of the considered view of the functional disability of the appellant / claimant has to be assessed at 30% i.e. 1/3rd of the 90% disability assessed by the Medical Board, which has not been assessed on functional disability basis. The Tribunal has fixed the notional monthly income of the appellant / claimant at Rs.9,000/-, which is low. The accident happened in the year 2017. If the year of the accident and the avocation of the appellant / claimant was given due consideration, the Tribunal ought to have fixed the notional monthly income of the appellant / claimant at Rs.12,000/- instead of erroneously fixing it at Rs.9,000/-. Accordingly, this Court enhances the notional monthly income of the appellant / claimant from 9,000/- to Rs.12,000/- The appellant / claimant was aged 40 years at the time of the accident. The correct multiplier to be adopted for a person aged 40 years is “15”. Therefore, the compensation payable to the appellant / claimant towards disability is modified by this Court as loss of earning capacity and re-assessed at Rs.6,48,000/- i.e., Rs.12,000/- x 12 x 15 x 30%.

5. The Tribunal has awarded a compensation of Rs.50,000/- towards pain and suffering and Rs.13,000/- towards transportation, which requires to be enhanced by this Court, considering the nature of the



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injuries sustained by the appellant / claimant and the long period of his hospitalisation. Accordingly, this Court enhances the compensation towards pain and suffering to Rs.60,000/- and towards transportation to Rs.15,000/- respectively.

6. The Tribunal has awarded a compensation of Rs.18,000/- towards loss of income. The said compensation is not required to be granted as it would amount to duplication, in view of the fact that this Court has already awarded a compensation of Rs.6,48,000/- towards loss of earning capacity. Hence the compensation awarded by the Tribunal towards loss of income is set aside by this Court.

7. The Tribunal has erroneously failed to award any compensation towards amenities, which the appellant / claimant is legally entitled to. This Court therefore awards a compensation of Rs.40,000/- towards loss of amenities to the appellant / claimant.

8. The Tribunal has awarded a compensation of Rs.15,000/- towards Extra nourishment and Attender charges, which is a meagre sum and therefore, this Court enhances the compensation and awards



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separately. Accordingly, this Court awards a compensation of Rs.40,000/- towards extra nourishment and Rs.25,000/- towards Attender Charges respectively.

9. Insofar as the compensation awarded by the Tribunal towards medical expenses at Rs.7,74,000/- is concerned, the same is supported by bills and only in accordance with the said bills the same was fixed by the Tribunal and therefore, there is no scope for any enhancement under the said head. This Court, therefore, confirms the compensation towards medical bills at Rs.7,74,000/- as fixed by the Tribunal.

10. 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 (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Disability at Rs.3,000 x 90%. Loss of earning capacity # Rs.12,000/- x 12 x 15 x 30%	2,70,000 *	6,48,000 #
Pain and suffering	50,000	60,000
Transportation	13,000	15,000
Medical expenses	7,74,000	7,74,000
Extra nourishment attender	15,000	



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
charges		
Extra nourishment		40,000
Attender charges		25,000
Loss of amenities		40,000
Loss of Income 9 x 2000	18,000	-
Total	11,40,000	16,02,000

11. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.11,40,000/- to Rs.16,02,000/-, as indicated above. No costs.

12. 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 MCOP No.826 of 2018 on the file of the Motor Accident Claims Tribunal, Sub Court, Kangayam, 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



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weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

10.07.2024

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

1. The Sub Court,
Motor Accident Claims Tribunal,
Kangayam.

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

ABDUL QUDDHOSE, J.

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