



C.M.A.No.2788 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2788 of 2021

Kumar

... Appellant

Vs.

1.P.Elavarasan

2.United India Insurance Co. Ltd.,
Silingi Building, No.134, Greaves Road,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 01.10.2020 made in M.C.O.P. No.7231 of 2015 on the file of the Motor Accidents Claims Tribunal, (Small Causes Court, Special Sub Judge No.1), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.K.Swaminathan
for R2

R1 - No Appearance

**JUDGMENT**

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<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Disability	15,000
Pain and Sufferings	15,000
Transportation	3,000
Extra Nourishment	10,000
Attender charges	2,750
Loss of earnings	8,000
Loss of future prospectus	10,000
Total	63,750

2. The appellant / claimant has sustained fracture of proximal phalanx of 2nd and 3rd toe of right foot as a result of an accident caused by a vehicle, insured with the second respondent/Insurance Company. The nature



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of injuries sustained by the appellant/claimant as well as the cause of the accident was not disputed by the second respondent/Insurance Company before the Tribunal.

3. The appellant/claimant was hospitalized for a period of 11 days and he was working as a Clerk in a Private Concern. The Tribunal has fixed his notional monthly income at Rs.8,000/-. This Court, after giving due consideration to the year of the accident, which happened in the year 2015, is of the considered view that the assessment of the notional monthly income of the appellant/claimant at Rs.8,000/- by the Tribunal is a correct assessment.

4. The Tribunal has awarded compensation towards loss of income to the appellant/claimant for a period of one month, which in the considered view of this Court, is incorrect. Having sustained fracture as stated supra and that too when the appellant/claimant was hospitalized for a period of 11 days, the Tribunal ought to have calculated the loss of income for a period of two months, instead of erroneously calculating the loss of income for a period of one month.



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5. The Medical Board has assessed the disability of the appellant/claimant at 5%, which the Tribunal has accepted. However, the Tribunal has erroneously calculated the disability compensation by calculating the same at Rs.3,000/- per percentage of disability though for the year 2015 an accident victim is entitled to get disability compensation at Rs.4,000/- per percentage of disability. Accordingly, the disability compensation payable to the appellant/claimant is enhanced from Rs.15,000/-, calculated at Rs.3,000/- per percentage of the disability for the 5% disability suffered by the appellant/claimant to Rs.20,000/- calculated at Rs.4,000/- per percentage of disability.

6. Excepting for modifying the disability compensation awarded by the Tribunal from Rs.15,000/- to Rs.20,000/- and loss of earning from Rs.8,000/- to Rs.16,000/-, the compensation awarded by the Tribunal under various other heads does not call for any interference by this Court as it a just compensation.



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7. For the foregoing reasons, the compensation payable by the second respondent Insurance Company is re-worked in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
Disability	15,000	20,000
Pain and Sufferings	15,000	15,000
Transportation	3,000	3,000
Extra Nourishment	10,000	10,000
Attender charges	2,750	2,750
Loss of earnings	8,000	16,000
Loss of future prospectus	10,000	10,000
Total	63,750	76,750

8. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.63,750/-** to **Rs.76,750/-**. The second respondent/insurance company is directed to deposit the enhanced award amount of **Rs.76,750/-**, 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 cost to the credit of **M.C.O.P. No.7231 of 2015** on the file of the **Motor Accidents Claims Tribunal, (Small Causes Court, Special Sub Judge No.1), Chennai**, within a period of **four weeks** from the date of receipt of a copy of this judgment.



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C.M.A.No.2788 of 2---

9. 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 being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. No.7231 of 2015** to the bank account of the appellant directly through NEFT / RTGS, within a period of **one week** thereafter. No costs.

10.06.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accidents Claims Tribunal, (Small Causes Court, Special Sub Judge No.1), Chennai.
2. The Section officer, Record Section, High Court of Madras.



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C.M.A.No.2788 of 2021

ABDUL QUDDHOSE. J.,

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