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C.M.A.No.3036 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3036 of 2021

M.Duraisamy

... Appellant

Vs.

1.R.Ashok Kumar

2. Manger,
United India Insurance Company Ltd.,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road, Namakkal,
Namakkal District,
Pin - 637 001.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Award and Decree dated 19.02.2020 made in M.C.O.P. No.308 of 2016 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar
for R2

R1 - NDW vide SR-84982

**JUDGMENT**

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<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Loss of partial loss of earning (Rs.3,000/- x 30%)	90,000
Medical Bills (Ex.P6)	74,680
Pain and Sufferings	40,000
Extra Nutrients	7,500
Transport Expenses	5,000
Loss of income period of treatment	36,000
Attender charge	Nil
Total	2,53,180

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

a) Head injury with subdural hematoma in the left inferior temporal lobe adjacent to the left mastoid air cells;



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b) Left undisplaced neck of femur fracture.

3. The nature of injuries sustained by the appellant / claimant was also not disputed by the respondents before the Tribunal. The Doctor has assessed the disability of the appellant / claimant at 40%. However, the Tribunal, based on the evidence available on record and after giving due consideration to the nature of injuries sustained by the appellant / claimant and the period of his hospitalization, has correctly assessed the disability of the appellant / claimant at 30%. Eventhough the learned counsel for the appellant would submit that without any basis, the Tribunal has reduced the disability to 30% despite the fact that the Doctor has assessed the disability of the appellant / claimant at 40%. This Court is of the considered view that the appellant / claimant has not placed any evidence on record before the Tribunal excepting for production of the disability certificate by a private Doctor engaged by the appellant / claimant, who is not an independent witness. Therefore, this Court has to reject the contention of the learned counsel for the appellant / claimant that the reduction of the disability to 30% by the Tribunal is an incorrect reduction.



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4. The accident happened in the year 2015. The Tribunal has assessed the disability compensation payable to the appellant / claimant at Rs.3,000/- per percentage of disability for the 30% disability suffered by the appellant / claimant. This Court is of the considered view that for an accident that happened in the year 2015, the disability compensation has to be assessed at Rs.4,000/- per percentage of disability. Having suffered 30% of disability, the Tribunal ought to have awarded disability compensation at Rs.1,20,000/- . But, instead, has erroneously awarded Rs.90,000/-. Therefore, the disability compensation payable to the appellant / claimant is enhanced from Rs.90,000/- to Rs/.1,20,000/- by this Court.

5. Eventhough, the appellant / claimant has produced medical bills (Ex.P6) to prove that he had to incur Rs.77,970/- for his medical treatment on account of the injuries sustained by him due to the accident, the Tribunal without any basis has reduced the compensation payable towards medical bills to Rs.74,680/- though the appellant / claimant is entitled for Rs.77,970/-. After giving due consideration to the nature of injuries sustained by the appellant / claimant and the period of his hospitalization, this Court is of the considered view that the compensation awarded by the



Tribunal under various other heads viz., pain and sufferings, extra nutrients, transport expenses, loss of income during the period of treatment is a just compensation, which does not call for any interference from this Court.

6. The appellant / claimant had sustained head injuries and in view of the same, he would have required the services of an attender. The Tribunal ought have awarded compensation towards attender charges. But under the impugned award, erroneously, the Tribunal has failed to award any compensation towards attender charges. This Court, after giving due consideration to the evidence available on record, awards a compensation of Rs.7,500/- to the appellant / claimant towards attender charges.

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>
Loss of partial loss of earning	90,000	1,20,000
Medical Bills (Ex.P6)	74,680	77,970
Pain and Sufferings	40,000	40,000
Extra Nutrients	7,500	7,500



<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
Transport Expenses	5,000	5,000
Loss of income period of treatment	36,000	36,000
Attender charge	Nil	7,500
Total	2,53,180	2,93,970/-

8. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.2,53,180/-** to **Rs.2,93,970/-**. The second respondent/insurance company is directed to deposit the enhanced award amount of **Rs.2,93,970/-**, 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.308 of 2016** on the file of the **Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Namakkal**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

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.308 of 2016** to



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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 / Chief Judicial Magistrate Court, Namakkal.
2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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