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C.M.A.No.1801 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1801 of 2022

Kandasamy

.. Appellant

Vs.

1.Karthick

2.The United India Insurance Company Limited,
Divisional Office,
HUB Ranga Building,
Peramanur Main Road,
Permanur, Salem - 636 007.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 25.03.2022 made in M.C.O.P. No.1187 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : R1-Exparte
Ms.I.Malar for R2

JUDGMENT



C.M.A.No.1801 of 2022

WEB COPY

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

2.The Tribunal, under the impugned award, has directed the second respondent/Insurance Company to pay the appellant/claimant a compensation of Rs.3,84,586/- for the injuries sustained by him as a result of an accident, caused by a vehicle, insured with the second respondent/Insurance Company. The details of the compensation awarded by the Tribunal are as follows:

S.Nos.	Head	Amount awarded by the Tribunal
1.	Pain and suffering	Rs. 30,000.00
2.	Loss of income	Rs. 36,000.00
3.	Medical expenses	Rs.1,25,086.00
4.	Transport expenses	Rs. 12,500.00
5.	Extra Nourishment	Rs. 12,500.00
6.	Attender charges	Rs. 12,500.00
7.	Cloth damages	Rs. 1,000.00
8.	Loss of amenities	Rs. 30,000.00
9.	Permanent disability	Rs.1,25,000.00
	Total	Rs.3,84,586.00

3.The appellant/claimant is an Agriculturist and was aged 66 years



C.M.A.No.1801 of 2022

at the time of the accident. The accident happened in the year 2016. Even though the appellant/claimant had pleaded in his Claim Statement that he was earning more income, the Tribunal has fixed the notional monthly income of the appellant/claimant at Rs.6,000/- since no documentary evidence was produced by the appellant/claimant.

4.This Court is of the considered view that even though documentary evidence was not produced by the appellant/claimant, the Tribunal ought to have given due consideration to the avocation and the year of the accident. If the avocation and the year of the accident were taken into consideration, the Tribunal ought to have fixed the notional monthly income of the appellant/claimant at Rs.12,000/- despite the fact that the appellant/claimant was aged 66 years. Any agriculturist, for that matter, irrespective of his age, would have earned Rs.12,000/- per month in the year 2016. Therefore, this Court enhances the notional monthly income of the appellant/claimant from Rs.6,000/- to Rs.12,000/-. The appellant/claimant had sustained the following injuries as a result of the accident:

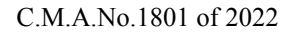
'Nature of injury - comminuted fracture distal femur left and both bones left proximal third'



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5.As a result of the injuries, the appellant/claimant has difficulty in squatting, sitting cross legged and limping while walking. There is also shortening of left lower limb and pain over knee. The above condition of the appellant/claimant are confirmed through the Medical Board report, which has been marked as Ex.C1 before the Tribunal. The nature of injuries sustained by the appellant/claimant has not been disputed by the respondents as seen from the evidence available on record. The appellant/claimant was hospitalised for a period of 18 days, which fact has also not been disputed by the respondents. The Tribunal has awarded a disability compensation of Rs.1,25,000/- for 25% disability assessed by the Medical Board, calculated at Rs.5,000/- per percentage of disability. The said assessment is a correct assessment and it does not call for any further enhancement by this Court.

6.The Tribunal has erroneously awarded a lesser compensation towards pain and suffering at Rs.30,000/-. After giving due consideration to the fact that the appellant/ claimant had sustained two fractures and was hospitalised for a period of 18 days, this Court enhances the compensation towards Pain and suffering from Rs.30,000/- to



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9. Insofar as the compensation awarded by the Tribunal towards Transport expenses, Extra Nourishment and Attender charges at Rs.12,500/- each is concerned, the same is low and it has to be enhanced. Accordingly, this Court enhances the same to Rs.15,000/-, Rs.25,000/- and Rs.20,000/- respectively.



C.M.A.No.1801 of 2022

10.Insofar as the compensation awarded by the Tribunal under the heads Damages to clothing and Loss of amenities is concerned, the same is confirmed by this Court as the Tribunal has rightly awarded the same at Rs.1,000/- and Rs.30,000/- respectively.

11.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,84,586/- to Rs.4,63,086/- by this Court as detailed hereunder:

S.Nos.	Head	Amount awarded by this Court
1.	Pain and suffering	Rs. 50,000.00
2.	Loss of income	Rs. 72,000.00
3.	Medical expenses	Rs.1,25,086.00
4.	Transport expenses	Rs. 15,000.00
5.	Extra Nourishment	Rs. 25,000.00
6.	Attender charges	Rs. 20,000.00
7.	Cloth damages	Rs. 1,000.00
8.	Loss of amenities	Rs. 30,000.00
9.	Permanent disability	Rs.1,25,000.00
	Total	Rs.4,63,086.00

12.Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount. The second respondent/insurance company is directed to deposit the enhanced award amount of Rs.4,63,086/-, after deducting the amount already deposited, if any,



C.M.A.No.1801 of 2022

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.1187 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.I, Salem, within a period of four weeks from the date of receipt of a copy of this judgment.

13.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 an application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.1187 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.I, Salem to the bank account of the appellant/claimant directly through RTGS, within a period of one week thereafter.



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C.M.A.No.1801 of 2022

ABDUL QUDDHOSE, J.

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14.The first respondent was set exparte before the Tribunal. Since the driver of the insured vehicle, owned by the first respondent did not possess a valid driving licence, the Tribunal has granted pay and recovery rights to the second respondent/Insurance Company and the same is confirmed by this Court. No costs.

26.07.2024

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Internet: Yes/No

Speaking Order/Non-Speaking Order

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge No.I, Salem.

2. The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A. No.1801 of 2022