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C.M.A.No.3198 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 09.07.2024

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THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.3198 of 2021

Minor R.Dhenanth
Rep. by his mother R.Vennila

.. Appellant

Vs

1.L.N.Palanisamy

2.M/s.National Insurance Company Ltd.,
Div. No.10, Flor No.101-106, N-1,
BMC House, Connaught Place,
New Delhi – 100 001.

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.12.2019 passed in M.C.O.P.No.1104 of 2016, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant

: Mr.Ma.P.Thangavel

For R2

: Ms.R.Srividya

R1 set exparte



C.M.A.No.3198 of 2021

JUDGMENT

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

2. The Tribunal, under the impugned award, directed the second respondent Insurance Company to pay the claimant compensation for the injuries sustained by him as a result of the accident caused by a vehicle insured with the second respondent Insurance Company as detailed hereunder:-

Partial permanent disability	- Rs.60,000/-
Medical expenses	- Rs.1,74,300/-
Transport expenses	- Rs.7,500/-
Extra nourishment	- Rs.5,000/-
Pain and suffering	- Rs.30,000/-
Total	- Rs.2,76,800/-

3. The claimant had sustained crush injury in his left foot with dorsal composite tissue loss with open unstable left ankle joint, as a result of the accident caused by a vehicle insured with the second respondent Insurance Company. The nature of the injuries sustained by the claimant has not been disputed by the second respondent Insurance Company



C.M.A.No.3198 of 2021

before the Tribunal as seen from the evidence available on record. The doctor (PW2) has assessed the claimant's disability at 27%. However, the Tribunal has reduced the same to 20% and has awarded the disability compensation of Rs.60,000/- calculated at Rs.3,000/- per percentage of disability for the 20% disability assessed by the Tribunal.

4. This Court is of the considered view that reduction of disability by the Tribunal from 27% to 20% is not correct. If the nature of injuries sustained by him are taken into consideration, such a reduction cannot be done. There is no reasoning given by the Tribunal for reducing the disability of the claimant from 27% to 20%. Having sustained crush injuries and having been hospitalized from 29.06.2015 to 15.07.2015, this Court is of the considered view that disability of the claimant has to be fixed notionally at 25%, instead of 27% fixed by the doctor (PW2). Therefore, disability fixed by the Tribunal at 20% is enhanced to 25% by this Court.

5. The accident happened in the year 2015. The Tribunal has erroneously calculated the disability compensation at Rs.3,000/- per percentage of disability. It is well settled practice that for an accident of



C.M.A.No.3198 of 2021

the year 2015, the disability compensation is assessed at Rs.4,000/- per percentage of disability. Accordingly, the disability compensation is enhanced to Rs.1,00,000/- by this Court calculated at Rs.4,000/- per percentage of disability for the 25% disability suffered by the claimant, instead of Rs.60,000/- erroneously fixed by the Tribunal as stated supra.

6. The Tribunal has awarded a sum of Rs.1,74,300/- towards medical expenses, which is supported by medical bills, and there is no scope for enhancement under the said head and therefore, the same is confirmed by this Court. Similarly, the compensation awarded by the Tribunal towards pain and suffering at Rs.30,000/- is also a just compensation and is also confirmed. However, the Tribunal has awarded a lesser compensation towards extra nourishment and has failed to award any compensation towards loss of amenities and attender charges. Having sustained crush injuries and, that too, when the claimant was hospitalized from 29.06.2015 to 15.07.2015, the Tribunal ought to have awarded higher compensation towards extra nourishment, and ought to have awarded compensation towards attender charges and loss of amenities. Therefore, this Court enhances the compensation towards extra nourishment from Rs.5,000/- to Rs.10,000/- and awards a



C.M.A.No.3198 of 2021

compensation of Rs.5,000/- towards loss of amenities and Rs.10,000/- towards attender charges. The compensation awarded by the Tribunal towards transport expenses of Rs.7,500/- is a just compensation and there is no scope for enhancement under the said head and the same is confirmed by this Court.

7. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

Partial permanent disability	- Rs.1,00,000/-
Medical expenses	- Rs.1,74,300/-
Transport expenses	- Rs.7,500/-
Extra nourishment	- Rs.10,000/-
Pain and suffering	- Rs.30,000/-
Loss of amenities	- Rs.5,000/-
Attender charges	- Rs.10,000/-
Total	- Rs.3,36,800/-

8. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned award passed by the Tribunal in M.C.O.P.No.1104 of 2016, dated 05.12.2019, is modified by directing the second respondent Insurance Company to deposit the entire award amount of Rs.3,36,800/-



C.M.A.No.3198 of 2021

together with interest at 7.5% per annum from the date of claim petition till the date of realization, to the credit of M.C.O.P.No.1104 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the entire award amount as ordered in this judgment along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimant as apportioned by the Tribunal. No Costs.

09.07.2024

Index: yes/no
Neutral citation: yes/no
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C.M.A.No.3198 of 2021

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Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Namakkal.

ABDUL QUDDHOSE,J.



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C.M.A.No.3198 of 2021

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C.M.A. No.3198 of
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