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C.M.A.No.2952 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2952 of 2021

Raja

... Appellant

Vs.

1.Oomadurai

2.The Iffco - Tokio General Insurance Co., Ltd.,  
No.138 /2, 2nd Floor, L.M.R. Shopping Arcade,  
Opp: M.G.M. Theatre, Namakkal.

... Respondents

**PRAYER:** Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 23.03.2020 made in M.C.O.P. No.190 of 2016 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For Respondents : Mr.M.Jayaram  
for R2

No appearance for R1

### **JUDGMENT**

This appeal has been filed by the claimant seeking for enhancement of compensation. The Tribunal under the impugned award has directed the



second respondent Insurance Company to pay compensation to the appellant / claimant for the injuries sustained by him as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent as detailed hereunder:

| <i><b>Heads</b></i>               | <i><b>Amount awarded<br/>by the Tribunal<br/>in Rs.</b></i> |
|-----------------------------------|-------------------------------------------------------------|
| Permanent disability              | 30,000                                                      |
| Pain and Suffering                | 25,000                                                      |
| Extra nourishment and amenities   | 10,000                                                      |
| Attender charges                  | 12,000                                                      |
| Hospitalization (Including bills) | 1,50,000                                                    |
| Transportation                    | 10,000                                                      |
| Loss of income for three months   | 24,000                                                      |
| <b>Total</b>                      | <b>2,61,000</b>                                             |

2. Under the impugned award, due to the non wearing of the helmet and due to the fact that the accident happened while the appellant / claimant was driving in the wrong side of the road, the Tribunal has fixed contributory negligence of the appellant / claimant at 10%. Learned counsel for the appellant / claimant has also not raised any serious objection with regard to the findings of the Tribunal as regards the contributory negligence of the appellant / claimant. His submissions were primarily made before this Court only on the quantum of compensation awarded by the Tribunal which



according to him is low. The Medical Board had assessed the disability of the appellant / claimant at 10% and the Tribunal has awarded disability compensation to the appellant / claimant at Rs.30,000/- calculated at Rs.3,000/- per percentage of disability. The nature of injuries sustained by the appellant / claimant is not disputed by the respondents.

3. The appellant / claimant was hospitalized for a period of 12 days as seen from the discharge summary which has been marked as an exhibit before the Tribunal. The appellant / claimant has sustained crush injuries including two fractures which is also not disputed by the respondents. The Tribunal has accepted the assessment of the Medical Board with regard to the appellant's / claimant's disability and has awarded disability compensation for the 10% disability suffered by the appellant / claimant. However, the Tribunal, in the considered view of this Court, has awarded only a disability compensation of Rs.30,000/- calculated at Rs.3,000/- per percentage of disability, which in the considered view of this Court is low.

4. The Tribunal ought to have considered the year of the accident and accordingly, this Court enhances the disability compensation from



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Rs.30,000/- to Rs.50,000/- by calculating the disability compensation at Rs.5,000/- per percentage of disability instead of Rs.30,000/- calculated at Rs.3,000/- per percentage of disability. Accordingly, the disability compensation is enhanced by this Court from Rs.30,000/- to Rs.50,000/- calculated at Rs.5,000/- per percentage of disability for the 10% disability suffered by the appellant / claimant.

5. The Tribunal has also not given adequate compensation to the appellant / claimant under extra nourishment charges and pain and suffering. Considering the nature of injuries sustained by the appellant / claimant and the period of his hospitalization, this Court, after giving due consideration to the same, enhances the compensation payable to the appellant / claimant towards pain and suffering from Rs.25,000/- to Rs.50,000/- and towards extra nourishment charges from Rs.10,000/- to Rs.25,000/-.

6. In so far as the compensation awarded by the Tribunal under various other heads are concerned, this Court is of the considered view that the same is a just compensation which does not call for any interference.



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

| <i><b>Heads</b></i>               | <i><b>Amount awarded by the Tribunal in Rs.</b></i> | <i><b>Amount awarded by this Court (Rs.)</b></i> |
|-----------------------------------|-----------------------------------------------------|--------------------------------------------------|
| Permanent disability              | 30,000                                              | 50,000                                           |
| Pain and Suffering                | 25,000                                              | 50,000                                           |
| Extra nourishment and amenities   | 10,000                                              | 25,000                                           |
| Attender charges                  | 12,000                                              | 12,000                                           |
| Hospitalization (Including bills) | 1,50,000                                            | 1,50,000                                         |
| Transportation                    | 10,000                                              | 10,000                                           |
| Loss of income for three months   | 24,000                                              | 24,000                                           |
| <b>Total</b>                      | <b>2,61,000</b>                                     | <b>3,21,000</b>                                  |

8. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.2,61,000/-** to **Rs.3,21,000/-**. The second respondent/insurance company is directed to deposit the enhanced award amount of **Rs.3,21,000/-**, 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.190 of 2016** on the file of the **Motor Accident Claims**



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**ABDUL QUDDHOSE. J.,**

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**Tribunal / Subordinate Judge Court, Tiruchengode**, 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.190 of 2016** to the bank account of the appellant directly through RTGS, within a period of **one week** thereafter. No costs.

**25.04.2024**

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

To

1. The Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode.
2. The Section officer, Record Section, High Court of Madras.

**C.M.A.No.2952 of 2021**