IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.476 of 2021

A. Ramu .... Appellant

vs.

1. Anandharaji
2. The Branch Manager,
United India Insurance Company Ltd.,
No.28, Meenakshi Complex,
Mailam Road,
Tindivanam – 604 001. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under 173 of the Motor Vehicles Act, 1988 against Decree and judgment passed in MCOP No.1835 of 2019, dated 24.02.2020 on the file of Motor Accidents Claim Tribunal, Principal Claims Tribunal, Tindivanam.

For Appellant : Mr.G. Mohammed Aseef
For Respondents : Ms.I. Malar for R2
R1 – Ex-parte

JUDGMENT

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

2. Heard Mr.G.Mohammed Aseef, learned counsel for the appellant / claimant and Ms. I. Malar learned counsel for the 2nd respondent / Insurance Company. The 1st respondent has remained ex-parte both before the Tribunal as well as this Court.

3. This Court has perused and examined the impugned award passed by the Tribunal.

4. The Tribunal under the impugned award has directed the 2nd respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.4,38,825/- for the injuries sustained by the appellant / claimant as a result of an accident caused by the vehicle owned by the 1st respondent and insured with the 2nd respondent. The details of the compensation awarded by the Tribunal to the claimant are as follows:

Heads	***Amount awarded by the Tribunal (Rs.)***
Disability 35% x Rs.3,000/- per percentage	1,05,000
Loss of income	48,000
Pain and suffering	50,000
Nourishment	30,000

Heads	***Amount awarded by the Tribunal (Rs.)***
Medical bills	1,77,825
Damage to cloth	1,000
Transport	15,000
Attender charges	12,000
Total	4,38,825

5. The appellant / claimant sustained the following injuries as a result of the accident caused by the vehicle insured with the 2nd respondent :-

"Fracture of the left leg"

As a result of the said fracture, rods were fixed on the left leg of the appellant / claimant and plastic surgery was also done. The Medical Board has assessed the disability of the appellant / claimant at 35%. The appellant / claimant is aggrieved by the non adoption of the multiplier method by the Tribunal for assessing the compensation towards the disability. According to him, the Tribunal ought not to have awarded the disability compensation on percentage method and it ought to have adopted the multiplier method. This Court to ascertain the physical condition of the appellant / claimant directed the appellant / claimant to appear-in-person before this Court. As directed by this Court, the appellant / claimant appeared-in-person, today before this Court. This Court notices that the appellant / claimant cannot walk without the support of a crutch. As seen from his injuries, a plastic surgery was also done on his left thigh and steel rods were also fixed in the surgery, which was done due to the injuries sustained by him on account of the accident, caused by the vehicle insured with the 2nd respondent / Insurance Company. The accident happened in the year 2017. Even today, the appellant / claimant continues to suffer from the disability and therefore, the disability is a permanent disability. The Medical Board has assessed the disability of the appellant / claimant at 35%. However, the entire 35% cannot be taken to be the functional disability of the appellant / claimant. This Court after giving due consideration to the nature of the injuries sustained by the appellant / claimant and the permanent disability suffered by him fixes the functional disability of the appellant / claimant at 20%. This Court is also of the considered view that the Tribunal has committed an error in awarding the disability compensation to the appellant / claimant on percentage method as the Tribunal ought to have adopted the multiplier method, since the appellant / claimant would have certainly lost his earning capacity due to the injuries sustained by him on account of the accident caused by the vehicle insured with the 2nd respondent / Insurance Company. The Tribunal has also erroneously fixed the notional monthly income of the appellant / claimant at Rs.8,000/- for an accident that happened in the year 2017. In the claim petition, the appellant / claimant has pleaded that he is an Engineer. To prove the same, he had also produced the identity card, issued by his employer, which was marked as an Ex P12. For an accident of the year 2017, the Tribunal ought to have fixed the notional monthly income of the appellant / claimant at Rs.12,000/-, even though the appellant / claimant had not filed any documentary evidence to prove his monthly income as pleaded in the claim petition. Therefore, this Court enhances the notional monthly income of the appellant / claimant as fixed by the Tribunal from Rs.8,000/- to Rs.12,000/-. The functional disability of the appellant / claimant is also fixed by this Court at 20% for the purpose of assessing the loss of earning capacity of the appellant / claimant. If Rs.12,000/- is taken as the notional monthly income of the appellant / claimant and 20% is taken as permanent disability of the appellant / claimant, the disability compensation would be Rs.5,18,400/- by adopting the multiplier of 18, since the appellant / claimant was aged 23 years. Since this Court has awarded the disability compensation to the appellant / claimant, the question of separately awarding compensation towards loss of income would not arise. Hence, the compensation awarded by the Tribunal at Rs.48,000/- towards loss of income at Rs.8,000/-p.m., for a period of six months is set aside by this Court.

6. The Tribunal has also awarded a compensation of Rs.1,77,825/- towards reimbursement of medical bills of the appellant / claimant incurred by him as a result of the injuries sustained by him, due to the accident caused by the vehicle insured with the 2nd respondent / Insurance Company. The sum of Rs.1,77,825/- is supported by medical bills which have been marked as Ex.P9 before the Tribunal. Therefore, this Court is of the considered view that a sum of Rs.1,77,825/- granted by the Tribunal towards medical bills is a just compensation.

7. Insofar as the compensation awarded by the Tribunal under various other heads, viz., pain and suffering, nourishment, damage to cloth, transport and attender charges are concerned, the same is a just compensation and does not call for any interference by this Court.

8. For the foregoing reasons, the compensation awarded by the

Tribunal under the impugned award is enhanced from Rs.4,38,825/- to Rs.8,04,225/- in the following manner :

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Disability *35% x 3,000 # Rs.12,000/- x 12 x 18 x 20%	1,05,000 *	5,18,400 #
Loss of income (Rs.8,000 x 6)	48,000	-
Pain and suffering	50,000	50,000
Nourishment	30,000	30,000
Medical Bills	1,77,825	1,77,825
Damage to cloth	1,000	1,000
Transport	15,000	15,000
Attender charges	12,000	12,000
Total	**4,38,825**	**8,04,225**

9. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.4,38,825/- to Rs.8,04,225/-, as indicated above. No costs.

10. The 2nd respondent / Insurance Company is directed to deposit the modified award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of

realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.1835 of 2019, on the file of the Motor Accidents Claims Tribunal, (Principal Claims Tribunal), Tindivanam, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant /claimant, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

12.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.

vsi2

To

1. The Principal District Judge,
Motor Accidents Claim Tribunal,
Principal Claims Tribunal,
Tindivanam.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

C.M.A. No.476 of 2021

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