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C.M.A.No.1272 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1272 of 2021

T.Babu

... Appellant

..Vs..

1.M.Geetha Anand

2.The New India Assurance Co. Ltd.,
No.46, Moore Street
Chennai-1.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the award and decree dated 23.07.2019 made in M.C.O.P No.5456 of 2014 on the file of the Motor Accident Claim Tribunal / Special Sub Judge No.I, Chennai.

For Appellant : Ms.P.Pooja
For M/s.Mohan Choudary

For Respondents : M/s.A.Salomi for R2



C.M.A.No.1272 of 2021

WEB COPY

J U D G M E N T

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

2. Under the impugned award, the Tribunal had directed the second respondent/Insurance Company to pay the appellant/claimant, a compensation of Rs.2,10,900/- as detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Disability (3000 x 25)	75,000/-
Pain and sufferings	30,000/-
Transportation	5,000/-/-
Medical expenses	21,150/-
Extra Nourishment	15,000/-
Attender Charges	16,750/-
Loss of Earnings	28,000/-
Loss of Future prospects	20,000/-
Total	2,10,900/-

3. The appellant/claimant has claimed in his claim petition that he was a carpenter and was earning Rs.700/- per day at the time of the accident. The accident happened in the year 2014. Since no documentary



C.M.A.No.1272 of 2021

evidence was produced by the appellant/claimant to prove his monthly income, the Tribunal had fixed the monthly income of the appellant/claimant on notional basis at Rs.7,000/-. Since the appellant/claimant is a carpenter and the year of the accident is 2014, this Court is of the considered view that the Tribunal has not taken note of the said fact for assessing the notional monthly income of the appellant/claimant. This Court is also of the considered view that the Tribunal ought to have fixed the notional monthly income of the appellant/claimant at Rs.10,000/- instead of erroneously fixing the same at Rs.7,000/-. Accordingly, this Court enhances the notional monthly income of the appellant/claimant from Rs.7,000/- to Rs.10,000/-.

4. The appellant/claimant had sustained fracture in the right thigh and fracture in the right hand 5th metacarpal. The Medical Board has assessed the disability of the appellant/claimant at 25%. The Tribunal has awarded a disability compensation of Rs.75,000/- to the appellant/claimant calculated at Rs.3,000/- per percentage for the 25% disability suffered by the appellant /claimant. This Court is of the considered view that the Tribunal has not



C.M.A.No.1272 of 2021

taken note of the year of the accident for fixing the disability payable to the appellant/claimant. If the year of the accident was taken into consideration, the Tribunal ought to have fixed the disability compensation at Rs.4,000/- per percentage of the disability instead of erroneously fixing the same at Rs.3000/- per percentage of the disability. Accordingly, this Court enhances the disability compensation payable to the appellant/claimant from Rs.75,000/- to Rs.1,00,000/- (Rs.4000 x 25) by awarding the same at Rs.4,000/- per percentage of the disability for the 25% disability suffered by the appellant/claimant.

5. The appellant/claimant was hospitalized for a period of 67 days which has not been disputed by the respondents before the Tribunal as seen from the evidence available on record. Having been hospitalized for 67 days, this Court is of the considered view that the compensation awarded by the Tribunal towards pain and suffering at Rs.30,000/- is low and it has to be enhanced at Rs.50,000/-. Accordingly, this Court enhances the compensation towards pain and suffering from Rs.30,000/- to Rs.50,000/-. Similarly, the compensation awarded by the Tribunal towards transportation



C.M.A.No.1272 of 2021

has to be enhanced from Rs.5000/- to Rs.10,000/-, towards extra nourishment from Rs.15,000/- to Rs.20,000/- and towards attender charges from Rs.16,750/- to Rs.25,000/- by this Court. Since the appellant/claimant was hospitalized for more than 67 days, this Court is of the considered view that the compensation awarded by the Tribunal towards loss of earning at Rs.28,000/- is low and the Tribunal has committed an error by calculating the same only for a period of four months, though as a carpenter considering the nature of the injuries sustained by him, he would have been unable to perform his regular work for a minimum period of six months. Therefore, this Court reassess the compensation payable to the appellant towards loss of earning by calculating the same for a period of six months instead of four months erroneously applied by the Tribunal. Since the notional monthly income of the appellant/claimant has been enhanced by this Court from Rs.7,000/- to Rs.10,000/-, the compensation towards loss of earning payable to the appellant/claimant is enhanced from Rs.28,000/- to Rs.60,000/- at Rs.10,000/- per month for a period of six months. The Tribunal has also failed to award any compensation towards loss of amenities to the appellant/claimant which he is legally entitled to. This



C.M.A.No.1272 of 2021

Court, after giving due consideration to the nature of the injuries sustained by the appellant/claimant awards a compensation of Rs.20,000/- towards loss of amenities. However, the Tribunal has erroneously awarded a compensation of Rs.20,000/- towards future prospects which the appellant/claimant is not legally entitled to. Accordingly, the compensation awarded by the Tribunal at Rs.20,000/- towards future prospects is set aside by this Court.

6. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.2,10,900/- to Rs.3,06,150/- by this Court as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Disability	75,000/- (3000 x 25)	1,00,000/- (Rs.4000 x 25)
Pain and Suffering	30,000/-	50,000/-
Transport to Hospital	5,000/-	10,000/-
Medical Expenses	21,150/-	21,150 /-
Extra Nourishment	15,000/-	20,000/-
Attender Charges	16,750/-	25,000/-
Loss of earning	28,000/-	60,000/-



C.M.A.No.1272 of 2021

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
	(4 x 7000)	(6 x 10,000)
Loss of amenities	Nil	20,000/-
Future prospects	20,000/-	Nil
Total	2,10,900/-	3,06,150/-

7. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second Respondent/Insurance Company is directed to deposit the modified award amount i.e, **Rs.3,06,150/-** along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.5456 of 2014 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 award amount to the bank account of the Appellant/Claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

10.07.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

7/9



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C.M.A.No.1272 of 2021

To

1. The Motor Accident Claims Tribunal
Special Sub Judge No.I
Small Causes Court, Chennai.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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C.M.A.No.1272 of 2021

ABDUL QUDDHOSE, J.

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C.M.A.No.1272 of 2021

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