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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 73 of 2021

Arumugam

... Appellant

Vs.

1. Kesavan

2. The New India Assurance Company Limited,
Through its Branch Manager,
Number 38-X, First Floor,
Kottaram Road, V.K.Puram-627 425.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to enhance the award amount in M.C.O.P.NO. 695 of 2015 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) (Dealing with M.C.O.P. Cases), Tirunelveli dated 04.02.2020.

For Appellant : M/s.T.Selvakumaran

For R-1 : Exparte

For R-2 : Mr.B.Vijay Karthikeyan

JUDGEMENT

The claimant has preferred this Civil Miscellaneous Appeal to enhance the compensation passed in M.C.O.P.NO. 695 of 2015 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) (Dealing with M.C.O.P. Cases), Tirunelveli, dated 04.02.2020.



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2. It is a case of injury. The contention of the claimant is that he was working as Railway Gate Keeper and was earning more than Rs.22,000/- and he underwent surgery as inpatient for more than 22 days. Subsequently, he could not join the service immediately, since it took time for healing after operation period. Moreover, his leg was amputated and he could not continue his service as Railway Gate Keeper. Therefore, he approached his higher officials for granting alternative job. On his request, the higher authorities have considered and provided an alternative job of Peon. Hence, he could not get any salary for the period of six months and the salary for six months ought to have been included. The said contention of the claimant was vehemently opposed by the Insurance Company, wherein the Learned Counsel appearing for the Insurance Company submitted that the claimant has deposed before the Tribunal that he was granted treatment by the Railway Hospital and the medical expenses are free of cost. He was admitted for 22 days and even for 22 days his entire injuries were healed. Therefore, there is no question of granting loss of income for a period of six months. Subsequently, he was re-appointed as Peon and his salary was raised from Rs.22,000/- to Rs.27,000/-. Therefore, there cannot be any loss of income.



3. After hearing rival submissions, this Court is of the considered opinion that delay in granting alternative job is a mistake committed by the employer of the claimant. Therefore, that mistake cannot be fixed on the Insurance company. At the same time, the claimant was as inpatient in hospital for 22 days and the injuries would not have healed within 22 days. Therefore, four months period will be appropriate period for loss of salary and also enhanced compensation under pain and suffering, extra nourishment and loss of convenience. The other compensation granted under other heads are confirmed.

4. Accordingly, this Court is inclined to enhance compensation granted by the Tribunal and the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Disability at Rs.4,000 x 7	Rs. 28,000/-	Rs. 28,000/-	Confirmed
2.	For Pain and suffering	Rs. 10,000/-	Rs. 20,000/-	Enhanced
3.	For Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-	Confirmed
4.	Extra Nourishment	Rs. 15,000/-	Rs. 25,000/-	Enhanced
5.	Attendant Charges	Rs. 3,000/-	Rs. 3,000/-	Confirmed
6.	Loss of Convenience	Rs. 10,000/-	Rs. 20,000/-	Enhanced
Total		Rs. 71,000/-	Rs. 1,01,000/-	



From the total compensation of Rs.71,000/- this Court is enhancing a sum of Rs.1,01,000/-as compensation.

5. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

This Court is enhancing the compensation of Rs.1,01,000/-from the compensation granted by the Tribunal Rs.71,000/-. The Insurance Company is directed to deposit the entire compensation amount, within a period of eight weeks from the date of receipt of a copy of the order with 7.5% interest from the date of filing the petition till the date of realization along with Costs, if not deposited. On such deposit being made, the claimant is entitled to withdraw the same, less the amount, if already withdrawn. The claimant is directed to pay the balance Court fee or the same shall be deducted from the amount before disbursing. No Costs.

27.02.2024

NCC : Yes / No
Index : Yes / No
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To

1. The Motor Accident Claims Tribunal/Special Sub Court,
(Dealing with M.C.O.P. Cases), Tirunelveli

2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No.73 of 2021

27.02.2024