

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2178 of 2016

Subash Chandra Bose

... Appellant / Petitioner

versus

1. Kanthalakshmi

2. The Divisional Manager,
IFFCO TOKYO General
Insurance Co. Ltd.,
No.28, 1st & 2nd Floor,
North Usman Road,
T.Nagar, Chennai.

... Respondents / Respondents

(R1 remained ex parte before the
Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order and Decree dated 31.03.2011 made in M.A.C.T.O.P..583 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

For Appellant : M/s.M.Malar

For R2 : Mr.J.Michael Visuvasam

JUDGMENT

The claimant, Subash Chandra Bose, aged about 23 years, engaged in catering service, earning a sum of Rs.10,000/- p.m., met with an accident on 25.01.2007 and sustained injuries, in respect of which, he filed a claim petition in M.A.C.T.O.P.No.583 of 2007 before the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai, claiming compensation of Rs.5,00,000/-.

2. As against the said claim, the Tribunal, on considering the oral and documentary evidence, awarded a sum of

Rs.2,10,170/- as compensation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of compensation read as under:

Permanent Disability	-	Rs. 1,83,600/-
Transport expenses	-	Rs. 2,000/-
Extra nourishment	-	Rs. 2,000/-
Medical expenses	-	Rs. 570/-
Attendant charges	-	Rs. 2,000/-
Mental agony, loss of amenities, loss of happiness	-	Rs. 10,000/-
Pain and sufferings	-	Rs. 10,000/-

Total	-	Rs.2,10,170/-

Challenging the quantum of compensation as inadequate, the claimant has filed the present Civil Miscellaneous Appeal.

3. The learned counsel appearing for the appellant submits that the compensation awarded towards loss of earning capacity is extremely low; the appellant was earning a sum of Rs.10,000/- p.m., but, the Tribunal has taken the earning at Rs.3,000/- p.m., which is not justified. Learned counsel for the appellant, further points out that the Tribunal has awarded only a meager amount of Rs.570/- towards medical expenses, when the appellant has taken continuous treatment for a period of two years. It is contended that the amount awarded towards pain and sufferings, cost of attendant, loss of enjoyment of amenities and medical expenses for a period of two years is grossly inadequate and there must be appropriate increase on account of those heads.

4. Per contra, learned counsel appearing for the Insurance company points out that the earning of the claimant was of the year 2007 and in the absence of documentary evidence, the Tribunal was fair enough to fix the income at Rs.3,000/- p.m., which is reasonable. It is also pointed out by the learned counsel for the Insurance Company that in case of 30% disablement, the formula that has to be adopted is awarding disablement compensation at the rate of Rs.2,000/- per percentage only and therefore, there cannot be any increase on account of loss of earning capacity.

5. On an overall consideration of the materials available on record coupled with the medical condition and treatment taken by the claimant, the contention of the learned counsel for the insurance company is acceptable. This Court is of the considered view that the amount awarded under the head loss of earning capacity is just and reasonable and no enhancement is warranted in the facts and circumstances of the case.

6. Insofar as the contention of the learned counsel for the appellant that the compensation awarded under the other heads are on the lower side, a careful perusal of the materials available on record reveals that the contention raised by the appellant is well founded. Even though no documents have been placed before the Tribunal to substantiate the medical expenses, it is not in dispute that the claimant has suffered injuries in the accident for which he has taken treatment. Further, the accident had happened in the year 2007 and it is for the Tribunal to take into consideration the cost of living at the relevant point of time and the cost that would be incurred in getting medical aid in cases relating to accident. Having regard to the injuries suffered by the claimant like the fracture of Tibia in the left leg, a prolonged period of treatment is required, which would definitely entail continuous medical expenses. This Court is of the considered view that a compensation of Rs.20,000/- under the head future medical expenses would be a just and reasonable compensation.

7. Due to the accident and the injuries suffered by the claimant, the claimant would not have been in a position to attend to his employment at least for a period of six months and would definitely have lost earning during the said point of time. Even considering the monthly income at Rs.3,000/- as has been fixed by the Tribunal, the claimant is entitled to a sum of Rs.18,000/- under the head the loss of earning.

8. The compensation awarded under the heads pain and suffering, extra nourishment, cost of attendant and transport expenses are on the lower side. This Court is of the considered opinion that the compensation under the heads pain and suffering, extra nourishment, cost of attendant and transport expenses needs to be enhanced. Accordingly, the compensation awarded by the Tribunal is restructured as under :-

S. No.	Description	Amt. Awarded by the Tribunal	Amt. Awarded by this Court
1.	Permanent Disability	Rs.1,83,600/-	Rs.1,83,600/-
2.	Transport expenses	Rs. 2,000/-	Rs. 12,000/-
3.	Extra nourishment	Rs. 2,000/-	Rs. 22,000/-
4.	Medical expenses	Rs. 570/-	Rs. 20,570/-

S. No.	Description	Amt. Awarded by the Tribunal	Amt. Awarded by this Court
5.	Attendant charges	Rs. 2,000/-	Rs. 12,000/-
6.	Mental agony, loss of amenities, loss of happiness	Rs. 10,000/-	Rs. 10,000/-
7.	Pain and sufferings	Rs. 10,000/-	Rs. 25,000/-
8.	Loss of earning for six months		Rs. 18,000/-
Total		Rs.2,10,170/-	Rs.3,03,170/-

9. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.2,10,170/- to Rs.3,03,170/-. However, there shall be no order as to costs.

10. It is represented that the Insurance Company has already deposited the amount as awarded by the claims Tribunal. The insurance company is directed to deposit the balance portion of the enhanced compensation ordered by this Court above along with interest at 7.5% p.a. from the date of petition till date of deposit, less interest for the default period, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. Court fee due shall be paid by the claimant before obtaining copy of the Judgment.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

ogy/GLN

To

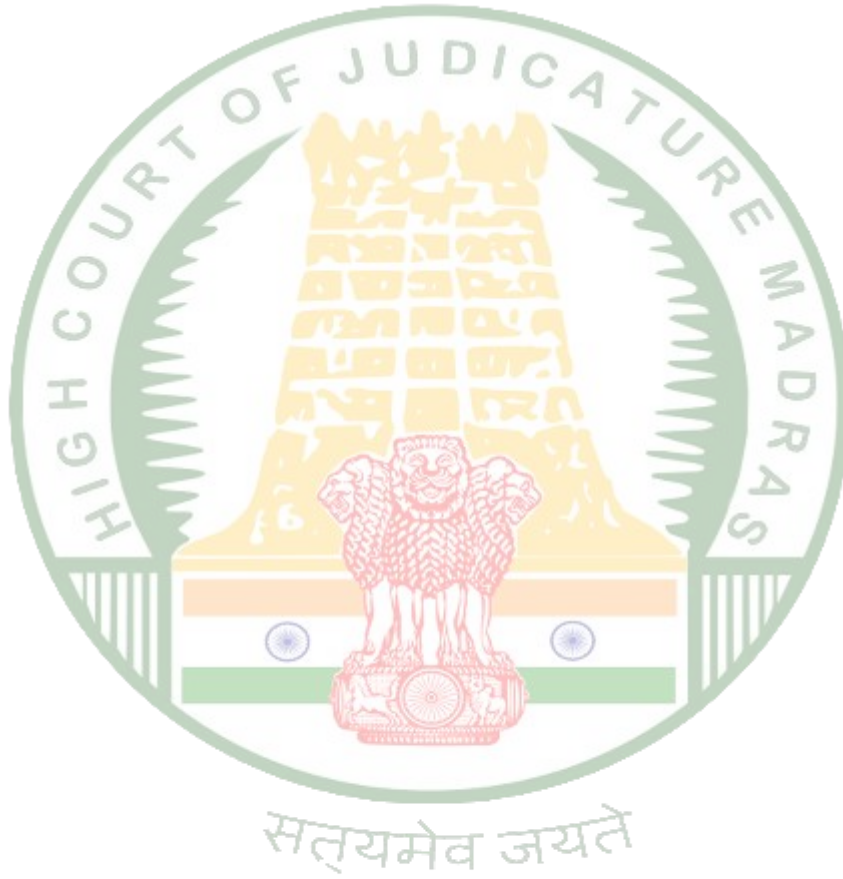
The Principal Sub Judge,
The Motor Accident Claims Tribunal,
Tiruvannamalai.

Copy TO

The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.2178 of 2016

VGII(CO)
GN(11/04/2018)



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