

IN THE HIGH COURT OF JUDICATE AT MADRAS

DATE : 10.07.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.1467 of 2017
and
C.M.P.Nos.9978 of 2017

P.Venkatakrishnan ... Appellant/Claimant

Vs.

1.P.Mohan
2.The Authorised Signatory,
ICICI Lombard General Insurance Co. Ltd.,
No.84/85, Wall Tax Road,
Arihant Plaza, 1st Floor,
Chennai-600 003. ... Respondents/Respondents

Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.11.2012 in MACT.O.P.No.116 of 2010 passed by the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Pondicherry.

For Appellant : Mr.S.Vennimalai
For Respondents : Mrs.R.Srividhya (For R2)

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Addl Sub-Judge), Pondicherry, vide judgment and decree dated 15.11.2012 in MACT.O.P.No.116 of 2010, awarding a sum of Rs.2,10,000/- as compensation as against the claim of Rs.20 lakhs, the present appeal has been filed by the claimant.

2.Since the present appeal has been filed claiming for enhancement of compensation amount, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

3. With regard to the quantum of compensation, it is the case of the appellant/claimant that on account of the accident, he had sustained comminuted fracture in cervical spine-C2, fracture in cervical spine C3 and multiple injuries in all over the body. In order to prove the disability suffered by him, he has examined P.W.2, who is a registered medical practitioner. P.W.2-Doctor has assessed the disability suffered by the victim/claimant as 61%. But, the Tribunal by rejecting the assessment made by P.W.2-Doctor fixed the disability at 35% and awarded a sum of Rs.2,000/- per each percentage of disability and awarded a sum of Rs.70,000/- under the head of permanent disability. That apart, the Tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings and a sum of Rs.9,000/- for loss of income for three months. Further, the Tribunal has awarded a sum of Rs.95,000/- towards medical expenses, which was supported by the medical bills. Further, the Tribunal awarded a sum of Rs.10,000/- for travelling expenses and a sum of Rs.4,000/- for attendant charges. Thus, the Tribunal has passed an award for a total sum of Rs.2,13,000/-.

4. Now, it is the submission of the learned counsel for the appellant/claimant that he suffered multiple injuries and now, he has become totally disabled and he is not in a position to carry on his normal avocation. Under such circumstance, instead of awarding compensation of Rs.2,000/- per each percentage of disability, the Tribunal ought to have awarded the compensation by applying multiplier method. Since the Tribunal has not applied the multiplier method, it has resulted in awarding an inadequate compensation under the head of permanent disability. That part, the learned counsel for the appellant/claimant would submit that the amount awarded by the Tribunal under other heads also on the lower side, therefore, the same needs proper enhancement.

5. On the other hand, the learned counsel appearing for the Insurance Company/R2 made a detailed submission by supporting the award passed by the Tribunal.

6. Keeping the submissions made on either side, We have carefully perused the materials available on record and We find that in order to speak about the disability suffered by the claimant, on the side of the claimant, one Doctor D.Sivaradje has been examined as P.W.2. The Discharge Slip issued by the Government General Hospital, Pondicherry was marked as Ex.P.3, discharge summaries were marked as Ex.P.4 to Ex.P.6, X-ray films were marked as Ex.P.9 & Ex.P.16 and Disability Certificate was marked as Ex.P.15. P.W.2-Doctor had assessed the disability suffered by the claimant at 61% in the following manner_

1.Communicated Fracture of the C2 Vertebral body noted, Extending to the odontoid process (stable fracture) 6%.

2.Anterior Wedge Compression fracture of C3 vertebral body (stable fracture) 5%

3.Superior end plate irregularity of C4 4%

4.Status post Traumatic Atlanto Axial Joint Subluxation with cord contusions 5%

5.Post Traumatic Quadripareisis with power 4/5 in muscles of all 4 limbs, with muscle wasting 20%

6.Complaining of severe pain in the neck on and off and with headache 4%

7.Unable to be without the Hard cervical collar, throughout any times 3%

8.Recurrent attacks of vertigo 3%

9.Numbness of right upper limb with delayed sensation in it 3%

10.Difficulty in lifting even light weighted things like tumblers, driving vehicles, climbing staircase and mastication 4%

11.Tenderness over upper cervical spine area 2%

12.Restriction in movements of lateral rotation neck 30° in each flexion and extension (by Goniometry with neck stiffness 2%)

Though the Doctor-P.W.2 fixed the disability suffered the claimant at 61%, the Tribunal on its own fixed the disability at 35% and awarded the compensation. Considering the nature of injuries sustained by the claimant, We are of the opinion that in the instant case, awarding compensation of Rs.2,000/- for each percentage of disability, is not proper. It is a fit case where the compensation amount ought to have been awarded by applying multiplier method, since on account of the injuries sustained by the claimant in the accident, he is not in a position to carry on his normal avocation as he was doing before the accident. As per Ex.P.11-Salary Certificate, the monthly salary of the claimant is Rs.7,500/-, which could be taken as loss of monthly income. The age of the claimant was 28 years at the time of the accident, therefore, the correct multiplier that has to be applied in this case is 17. If the multiplier method is adopted, the total amount comes to Rs.15,30,000/- ($7500 \times 12 \times 17 = 15,30,000$). If 50% of the amount is deducted towards personal expenses of the claimant, the amount comes to Rs.7,65,000/-, which is hereby awarded towards Permanent Disability.

7.Further, We find that the Tribunal has awarded only a sum of Rs.25,000/- for pain and sufferings. Considering the long period of treatment undergone by the claimant, the amount of

Rs.25,000/- awarded by the Tribunal for pain and sufferings is on the lower side. Hence, a same is hereby enhanced to a sum of Rs.1,00,000/-. Similarly, since the sum of Rs.10,000/- awarded by the Tribunal for transportation is on the lower side, the same is hereby enhanced to Rs.15,000/-. A sum of Rs.4,000/- awarded by the Tribunal for attended charges is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any amount for extra-nourishment. Hence, a sum of Rs.15,000/- is hereby awarded under the head of extra-nourishment. The Tribunal awarded a sum of Rs.95,000/- for medical expenses, which is supported by the Medical Bills, hence, the same is confirmed.

8.Thus, the total compensation amount of Rs.2,13,000/- (Rupees Two Lakhs Thirteen Thousand only) awarded by the Tribunal is hereby modified and enhanced to a sum of Rs.10,00,000/- (Rupees Ten Lakhs only). The break up details of the modified/enhanced compensation amount are as follows_

Permanent Disability	- Rs.7,65,000/-
Pain and Sufferings	- Rs. 1,00,000/-
Medical expenses	- Rs. 95,000/-
Transportation	- Rs. 15,000/-
Extra-nourishment	- Rs. 15,000/-
Attendant Charges	- Rs. 10,000/-

Total	Rs.10,00,000/-
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Accordingly, the appeal is allowed in part and the total compensation amount awarded by the Tribunal is hereby modified and enhanced to Rs.10,00,000/-. The Insurance Company is directed deposit the total compensation amount, after adjusting the amount if any already deposited, with interest at the rate of 7.5% from the date of petition till the date of deposit before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed.
No costs.

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Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

SSV

To

The Motor Accidents Claims Tribunal
(Additional Subordinate Judge)
Pondicherry.

+lcc to Mrs.R.Sreevidhya, Advocate Sr. 48230

C.M.A.No.1467 of 2017
and
C.M.P.Nos.9978 of 2017

GJ(CO)
VR(31/07/2017)



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