

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.267 of 2017

Jayachandran

... Appellant/Petitioner

versus

1. P.Muruganand

2. Bajaj Allianz General Insurance Co. Ltd.,  
Bhagwathi Palace, 2<sup>nd</sup> Floor,  
J-Block, No.13, 3<sup>rd</sup> Avenue,  
Anna Nagar East,  
Chennai - 600 102. ... Respondents/Respondents  
(R1 remained ex parte before the  
Tribunal)

Prayer:-

This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.11.2013 made in M.C.O.P.No.748 of 2009 on the file of the Motor Accident Claims Tribunal / IV Judge, Chennai.

For Appellant : M/s.Ramya V.Rao

For R2 : Mr.D.Bhaskaran

JUDGMENT

The claimant, V.Jayachandran, aged about 47 years, a Gulfi Ice merchant, earning a sum of Rs.200/- per day, met with an accident on 20.10.2007 and sustained injuries, in respect of which, he filed a claim petition in M.C.O.P.No.748 of 2009 before the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai, claiming a sum of Rs.2,50,000/- as compensation.

2.The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.27,200/- as compensation, the break-up details of which read as under:

|                         |   |             |
|-------------------------|---|-------------|
| Transportation and      |   |             |
| Extra nourishment       | - | Rs.25,000/- |
| Medical expenses as per |   |             |
| bill                    | - | Rs. 2,187/- |
|                         |   | -----       |
| Total                   | - | Rs.27,187/- |
|                         |   | -----       |
| Rounded off             | - | Rs.27,200/- |

3. The learned counsel appearing for the appellant/claimant submitted that when P.W.2., Doctor has assessed the disability at 25%, the Tribunal has discarded the evidence of P.W.2 and simply awarded a lump sum amount of Rs.25,000/- as compensation. The claimant has sustained abrasion in the right bone joint and laceration in the parieto occipital region, for which, primary suturing was done. Considering the injuries sustained by the claimant and the period of treatment, the Tribunal ought to have awarded compensation towards pain and sufferings, loss of income, mental agony and loss of expectation of life. Hence, the compensation awarded by the Tribunal is very low and it need to be enhanced.

4. The learned counsel appearing for the Insurance company submitted that the Tribunal has passed the award after considering the oral and documentary evidence adduced on the side of the claimants. Hence, the award passed by the Tribunal is justifiable and it need not be interfered with.

5. A perusal of the award passed by the Tribunal reveals that the claimant examined himself as P.W.1, wherein, he deposed that he was a Gulfi Ice merchant and earning a sum of Rs.200/- per day at the time of accident and after the accident, he could not continue his job for one year and that he also finds difficulty in lifting heavy objects. The claimant has also produced Ex.P1-Discharge summary issued by the Government General Hospital, which shows that he has sustained abrasion in right bone joint and laceration in the parieto occipital region and primary suturing was done and he was treated as inpatient from 20.10.2007 to 21.10.2007. Thereafter, the claimant was treated as inpatient at the Crescent Hospital from 21.10.2007 to 25.10.2007. P.W.2-Dr.J.R.R.Thiagarajan has assessed the disability at 25% and also detailing the injuries suffered by the claimant and the impact of the injuries on the day-to-day living of the claimant. The Tribunal held that since P.W.2 has not given treatment to the petitioner and has assessed the disability after a lapse of 6 years and there being no medical records to show any grievous injuries, no disability has been suffered by the claimant and in such circumstances, the assessment of disability at 25% by the doctor is not acceptable.

The Tribunal further held that since the claimant has suffered injuries, he would have suffered pain and would definitely require extra nourishment and transportation to the hospital would also have been incurred. Therefore, the Tribunal awarded a consolidated sum of Rs.25,000/-. Based on the medical bills, viz., Ex.P2 and Ex.P3 medical expenses to the tune of Rs.2,187/- has been awarded.

6. A perusal of the order passed by the Tribunal reveals that the Tribunal has taken into consideration the fact that the claimant sustained injuries in the accident. The evidence of the doctor shows the nature of the injuries sustained by the claimant. Though the Tribunal has held that the doctor, who treated him has not been examined, however, the insurance company has not disputed the statement of the doctor examined on the side of the claimant. If really the insurance company was serious in disputing, it should have examined the claimant through its doctor to speak about the injuries. In the absence of the same, discarding the evidence of the doctor, who is an expert in his field, it not permissible. This Court, on analysing the evidence of the doctor and also perusing the injuries sustained by the claimant, which is evident from the discharge summary, is of the considered view that the disability could safely be fixed at 10% and adopting percentage method, a sum of Rs.2,000/- per percentage of disability could be given as just and reasonable compensation. It is also evident from the records that no separate compensation has been awarded towards pain and suffering and extra nourishment. In such circumstances, this Court is of the considered view that the award passed by the Tribunal requires to be restructured and, accordingly, compensation is enhanced and restructured under the following heads :-

|                                  |   |              |
|----------------------------------|---|--------------|
| Disability at 10% at the rate of |   |              |
| Rs.2,000/- per percentage        |   |              |
| of disability                    | - | Rs. 20,000/- |
| Pain and suffering               | - | Rs. 20,000/- |
| Extra nourishment/Transport/     |   |              |
| Attendant charges                | - | Rs. 10,000/- |
| Medical expenses                 | - | Rs. 2,200/-  |
|                                  |   | -----        |
| Total                            | - | Rs. 52,200/- |
|                                  |   | -----        |

7. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.27,200/- to Rs.52,200/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. No costs.

8. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the compensation of Rs.52,200/-, less the amount, if any, already deposited, along with interest at the rate of 7.5%

p.a. from the date of petition till the date of deposit (less the interest amount for the default period, i.e., 699 days delay in filing the appeal) to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the claimant through RTGS, within a period of two weeks thereafter. The claimant shall pay the necessary court fee, if any, on the enhanced compensation before obtaining the copy of the Judgment.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal  
(IV Court of Small Causes)  
Chennai.
2. The Section Officer,  
V.R.Section,  
High Court of Madras,  
Chennai.

+1cc to Mr.A.N.Viswanatha Raw, Advocate, S.R.No.8610

C.M.A.No.267 of 2017

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