

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.288 of 2017

Muthusamy ... Appellant / Petitioner
versus

1. Sasikala Sampath

2. ICICI Lombard General Insurance Co. Ltd.,
No.140, 3rd Floor, Nungambakkam,
Chennai - 600 034. ... 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 08.07.2015 made in M.A.C.T.O.P.No.2282 of 2012 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Ms. M.Malar
For R2 : Ms. Sree Vidhya

JUDGMENT

The claimant, Muthusamy, aged about 45 years, working as a mason, earning a sum of Rs.500/- per day, met with an accident on 29.08.2010 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.2282 of 2012 before the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai, claiming compensation of Rs.6,00,000/-.

2. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.4,50,900/- as compensation, the break-up details of which read as under:

Medical Expenses	-	Rs. 5,000/-
Transportation	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Attender charges	-	Rs. 5,000/-
Damages to clothes	-	Rs. 5,000/-
Loss of future earning capacity (Rs.6,500 + 30% FP x 12 x 14 x 30%)	-	Rs.4,25,880/-
Total	-	Rs.4,50,880/-
Rounded off	-	Rs.4,50,900/-

Challenging the award passed by the Tribunal as inadequate, the claimant has filed this appeal.

3. The learned counsel appearing for the appellant/claimant submitted that though the doctor has assessed the disability at 45%, the Tribunal has fixed the disability only at 30%. Furthermore, while computing the compensation, the Tribunal was wrong in fixing the income of the claimant at Rs.6,500/- p.m. and did not consider the income of the claimant as claimed at Rs.500/- per day. Therefore, the compensation awarded under the head 'loss of earning capacity' should be enhanced. The Tribunal has not awarded any compensation towards pain and sufferings, loss of income and loss of amenities. Further, the compensation awarded under other heads are also low. Hence, the compensation awarded by the Tribunal requires interference.

4. The learned counsel appearing for the second respondent insurance company submitted that the Tribunal has passed the award after considering the oral and documentary evidence and hence, it is justifiable and it need not be required for interference.

5. A perusal of the award passed by the Tribunal reveals that the doctor, P.W.2, has assessed the disability at 45%. The claimant had suffered fracture of left fronto-parietal bone, left temporal lobe contusion SAH, Cerebral odema, due to which, the injured faces difficulties, which are post traumatic headache, giddiness, tremors left hand and leg, memory deficit in co-ordination of limb movements, walking faster, climbing stair case. However, the Tribunal has fixed the disability at 30%. There being no proof for the income of the claimant, in view of the ratio laid down in the case of Syed Sadiq vs. United India Insurance Co. Ltd. reported in 2014 (2) SCC 735 the Tribunal fixed the income of the claimant at Rs.6,500/- p.m. Further, adding 30% towards future prospective increase in income, and taking the age of the claimant at 45 years at the time of accident, the Tribunal adopted multiplier of 13 and awarded the compensation under the head loss of earning capacity at Rs.4,50,880/-. The Tribunal, by considering the nature of injuries and period of treatment, awarded a sum of Rs.5,000/- towards medical expenses, Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards attendant charges, Rs.5,000/- towards damages to clothes, in all totalling to a sum of Rs.4,50,880/- as compensation.

6. It is the case of the claimant that he was earning a sum of Rs.500/- per day at the time of accident. However, no evidence being available on record to prove the income of the

claimant, the Tribunal has fixed the income at Rs.6500/-, which cannot be said to be unsustainable. However, the Supreme Court, in Syed Sadiq's case (supra), even for an unskilled labour, has fixed the monthly income at Rs.6,500/-. The claimant, being a mason, a skilled labour, the Tribunal ought to have fixed a higher amount as monthly income. Considering the avocation of the claimant, this Court feels that income at Rs.8,000/= per month would be justifiable and adding 30% towards future prospective increase in income and adopting multiplier of 14, for the 30% functional disability suffered by the claimant, this Court quantifies the compensation at Rs.5,24,160/=. (Rs.8,000/- + 30% x 12 x 14 x 30%).

7. Considering the nature of injuries suffered by the claimant, it is clear that the claimant would have suffered pain and sufferings. Therefore, the compensation towards pain and sufferings should have been awarded, which the Tribunal has failed to award. Accordingly, this Court awards Rs.20,000/- towards pain and sufferings.

8. Insofar as the compensation awarded under other heads are concerned, the compensation awarded towards 'Transportation', 'Extra nourishment', 'damages to clothes' and 'Attendant charges' are very low. Considering the nature of injuries, period of treatment, the compensation awarded under those heads is require to be enhanced. The compensation awarded under the head 'medical Expenses' is reasonable and, accordingly, the same is confirmed.

9. Accordingly, the compensation awarded by the Tribunal is enhanced and restructured under the following heads :

Medical Expenses	-	Rs. 5,000/-
Transportation	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Attender charges	-	Rs. 10,000/-
Pain and sufferings	-	Rs. 20,000/-
Damages to clothes	-	Rs. 6,000/-
Loss of future earning capacity (Rs.8,000 + 30% x 12 x 14 x 30%)	-	Rs.5,24,160/-

Total	-	Rs.5,85,160/-

Rounded off	-	Rs.5,85,000/-

10. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.4,50,900/- to Rs.5,85,000/- along with interest at the rate of 7.5% p.a. No costs.

11. The 2nd respondent/Insurance Company is directed to deposit the compensation of Rs.5,85,000/-, less the amount, if any, already deposit, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, 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 necessary court fee, if any, shall be paid by the claimant before obtaining the copy of the Judgment.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

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

+1cc to Mr.R.SREEVIDHYA, Advocate, S.R.No.12955
+1cc to Mr.M.MALAR, Advocate, S.R.No. 12066

C.M.A.No.288 of 2017

RSI (CO)
TR(08/05/2018)

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