

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

Coram :

The Honourable Mrs. Justice S. RAMATHILAGAM

C.M.A.No. 2214 of 2007

Mr. R. Jaganathan
S/o. Ramasamy

...Petitioner/Appellant

Versus

1. S. Ponnulingam
(R1 was set exparte in the tiral court)
2. The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No.45, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 06.12.2006 made in M.A.C.T.O.P.No.2049 of 2003 on the file of the VI Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr. C. Munusamy
for M/s. C & K LAW FIRM

For Respondent - 2 : Mr. Vinod

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 06.12.2006 made in M.A.C.T.O.P.No.2049 of 2003 on the file of the VI Judge, Motor Accidents Claims Tribunal(Small Causes Court), Chennai.

2. The M.A.C.T.O.P. was filed by the claimant for compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident. The compensation awarded by the Tribunal is

Rs.42,500/- . The Tribunal after going through the evidence, enhanced the compensation under the following heads.

3. The appellant herein stated as grounds of appeal that the injury sustained by the injured, period of treatment taken by the injured and the occupation of the injured as Manager in a Private Firm are not considered. While calculating the Loss of Earning during the course of treatment, the amount awarded is not a reasonable one. Further, the amount awarded for Extra Nourishment is also very low and for Pain and Suffering, the amount awarded Rs.10,000/- is very meager and even while, assessing the disability of the petitioner, the assessment certificate given by the Doctor for 70% of partial and permanent disability is also not considered. In spite of the documents, Ex.P.4 to Ex.P.6, viz., the Disability Certificate, X-ray, and Audiogram Report respectively, further, the appellant has also aggrieved against the award of the Tribunal in not adopting the Multiplier Method to assess the Loss of Earning Capacity and hence, the award sum of Rs.42,500/- is very meager and for enhancing of the award amount. This appeal has been filed on the side of the appellant, it was argued that Ex.P.4 is the Disability Certificate, Ex.P.5 is the X-ray and Ex.P.6 is the Audiogram Report filed which were not considered by the Tribunal.

4. Regarding the above Ex.Ps, the evidence of P.W.2, Doctor who has given the Disability Certificate was perused, who has clearly deposed that the Medical Reports filed by the petitioner and he has also examined the claimant injured person. He has clearly deposed that now the claimant has head-ache, giddiness, tremors in the left-hand and memory deficit. The Evidence of P.W.2 is also that the claimant sustained head-injury and there was a blood clot inside the brain, that was noticed from the C.T.Scan. Further, P.W.2 has clearly stated that since, there were scars in the ear-drum of the injured, the Audiogram test was taken and the hearing loss was also noticed and he assessed the liability as 30% and due to the fracture in the nasal bone, the injured is not comfortable and it is assessed as 25% of disability.

5. During the Cross-Examination, also P.W.2 clearly stated that the disability assessed as 30% for hearing impairment is not on the higher side and for the head injury as 50% is also not on the higher side and it may further deposed that the disability assessment vary from 5% to 10% from Doctor to Doctor. So, nothing has been elucidated from P.W.2, by way of Cross Examination to deny the percentage of disability and only 5% to 10% can be varied from Doctor to Doctor.

6. On perusal of the award, considering the injuries on the head, ear and nose, the treatment undergone and the present condition of the petitioner, a consolidated sum of Rs.25,000/- was awarded for continuing partial and permanent disability and Earning power. On verification of the documents, it is seen that the claimant injured had sustained head injury, fracture in the nose and injuries caused impairment of hearing which were all serious in nature and it totally affects a person's working capacity and also inconvenience and mental agony that caused due to the injury and it also prevents a person with a free mind and good healthy condition. Good Healthy condition is a very good aspect that promotes a person's capacity to work. Hence, these injuries would not cause any Loss of Income to the injured person cannot be considered as a true one. The other grounds raised by the appellant is that while assessing the compensation "Multiplier" method, Loss of Income has not been adopted and the respondent has also argued that Multiplier Method need not be adopted.

7. On perusal of the entire records, it is learnt that the injured who sustained injury and treated in the best way, but, still, he has not regained the original health condition in all aspects which prevents a person from living a happy life. Further, the pain and suffering which was suffered by him also cannot be compensated by money. Based on the view, the respondent has also not made any strong views opposing the claimant's sufferings due to the injury and also the health condition after treatment.

8. As argued by the appellant, the amount awarded on the heads and for the Loss of Earning from 08.04.2003 to 07.10.2003, the award was given as Rs.3,000/- which really a meager amount and it is enhanced to Rs.10,000/-. Then coming to the Expenses incurred for Transport to the hospital, a sum of Rs.1,000/- was awarded is also modified to Rs.5,000/- and for the Extra Nourishment, a sum of Rs.1,000/- is awarded and it is enhanced to Rs.10,000/-.

9. As the petitioner's head, ear and nose has got injuries and treated, for Mental Agony, he was awarded a sum of Rs.2,000/- which is also considered a very meager and it is enhanced as Rs.15,000/-. For Pain and Suffering, the amount awarded is also enhanced and modified as Rs.20,000/- and for the Partial and Permanent Disability, a consolidated sum of Rs.25,000/- awarded is enhanced as Rs.40,000/-. The amount enhanced for the following heads.

10. In view of verifying the documents and also the evidence given on the side of the claimant, P.W.2, the amount awarded by the Tribunal under various heads is hereinbelow:

S.Nos.	Compensation Heads	Amount of Compensation
1	Loss of Earning	Rs.3,000/-
2	Transport Expenses	Rs.1,000/-
3	Extra Nourishment	Rs.1,000/-
4	Damage to Clothing and articles	Rs.500/-
5	Mental Agony	Rs.2,000/-
6	Pain and Suffering	Rs.10,000/-
7	Partial and Permanent Disability and Loss of Earning Power	Rs.25,000/-
	Total	Rs.42,500/-

11. The amount awarded under various heads is modified as follows:

S.Nos.	Compensation Heads	Amount of Compensation
1	Loss of Earning	Rs.10,000/-
2	Transport Expenses	Rs.5,000/-
3	Extra Nourishment	Rs.10,000/-
4	Mental Agony	Rs.15,000/-
5	Pain and Suffering	Rs.20,000/-
6	Partial and Permanent Disability	Rs.40,000/-
	Total	Rs.1,00,000/-

12. In the result, this Civil Miscellaneous Appeal is allowed and Rs.42,500/- (Rupees Forty Two Thousand and Five Hundred) the compensation amount awarded by the Tribunal is enhanced to Rs.1,00,000/- (Rupees One Lakh). No costs. The Insurance Company/second respondent herein is directed to deposit the entire amount of compensation, as enhanced by this Court, less the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.A.C.T.O.P.No.2049 of 2003 within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is

directed to transfer the amount directly to the bank account of the appellant, as per the ratio of apportionment ordered by the Tribunal, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any, shall be paid on the enhanced compensation amount by the appellant herein before receiving the copy of the judgment.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1. The VI Judge,
Motor Accidents Claims Tribunal (Small Causes Court),
Chennai.
 2. The Section officer
VR Section, High Court, Madras 104. (2 copies)
 3. The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr.K. Vinod, Advocate sr 89757.
+1 CC to Mr.C. Munusamy, Advocate sr 89507.

C.M.A.No.2214 of 2007

KK(CO)
SP(12/06/2018)

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