

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.02.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.322 of 2012

R.Sivaraj ... Appellant
Vs.

1. S.Balachandar
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37-Mettupalayam Road,
Coimbatore - 43. ... Respondents

Prayer:- Civil Miscellaneous Appeals have filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 24.11.2010 in M.C.O.P.No.127 of 2008 passed by the Motor Accident Claims Tribunal [I Additional Sub-Judge], Erode.

For Appellant : Mr.R.Nalliyappan

R1 : Given up

For R2 : Mr.S.V.Vasanthakumar

The rider of a motorcycle suffered serious facial injuries including loss of vision to his left eye in an accident that occasioned when a bus belonging to the respondent collided with the motorcycle on 06.10.2007, on the Veerapandi diversion road. The claimant sought a compensation of Rs.10,00,000/- whereas the Tribunal has passed an award for Rs.2,00,000/- with interest at 7.5%. Challenging the inadequacy of the compensation awarded the claimant has approached this Court seeking enhancement.

2. The learned counsel for the appellant submitted that the appellant was a young man of 19 years at the threshold of life, unmarried, suffered fracture of his facial bones, disfiguration, besides loss of his vision to his left eye. PW-2, an orthopaedic, physician has assessed the disability arising out of the facial injuries at 35% whereas PW-5, an ophthalmologist, has assessed the permanent disability arising out of loss of sight at 30%. In arriving at the compensation amount, the Tribunal fixed the percentage of disability of the claimant at

20% both for permanent disability each and awarded Rs.80,000/- calculating the same at Rs.2,000/- for every percentage of disability. The various heads on which award was passed is tabulated as below:

Heads	Amount awarded (Rs.)
Pain and Suffering	20,000
Extra nourishment	5,000
Attendant expenses	5,000
Loss of amenities	10,000
Medical expenses	57,000
Loss of income	9,000
Transportation charges	4,000
Towards 40% disability @ Rs.2,000/- each	80,000
Facial disfiguration	10,000
Total :	2,00,000

3. The learned counsel submitted that the case of the claimant must be treated as one of functional disability and he needs to be suitably compensated. He was a machine operator at the relevant time in Suba Plastics (P) Limited and was earning Rs.10,000/- per month which the claimant had brought out through the evidence of PW-3, the employer of the appellant, and Ext.P-11, salary certificate issued by him. However, ignoring the nature of injury and its real impact on the future earning capacity of the claimant and marital prospects, the Tribunal has reduced the percentage of disability of the claimant at 20% each both for permanent disability arising out of fracture and also for impairment of vision. For pain and suffering too, the appellant was inadequately compensated.

4. The learned counsel for the second respondent/Insurance Company submitted that it is not a case where, the appellant was totally incapable of eking out his livelihood and at any rate loss of a vision of one eye cannot be treated as 100% functional disability. He argued that the Tribunal has correctly assessed the compensation and the amount awarded is just, fair and reasonable.

5. Here is the case of a young man, aged 19, bachelor, had suffered injuries to his face, loss of vision of eye and also disfigurement. PW-2, in his testimony has stated that there was

a brain injury which has affected his muscles of his right limbs, both upper and lower. Further, he cannot open his mouth freely and could open it only up to 3 c.m., whereas for a normal human being, it would be 5 c.m. The sensation in face is also reduced.

6. The nature of injuries and the agonizing experience that the victim has undergone or perhaps still undergoing indicates that the disability for the appellant must be reckoned as one of functional disability. This, I determine at 60% functional disability. While PW-3 has stated that the appellant was paid Rs.10,000/- per month, it is not known whether he was actually paid that amount especially when the appellant has not produced any documents to establish his educational qualification. I am inclined to fix the monthly income as Rs.4,000/- per month, and applying a multiplier of 18, the compensation awardable on the head of functional disability of the claimant is Rs.5,18,400/- [4000X12X18X60%]. On the head of pain and suffering compensation is increased from Rs.20,000/- to Rs.30,000/-. On all other heads, I find that the award passed by the Tribunal is in order. The compensation amount as has been enhanced would now appear as below:

Heads	Amount awarded (Rs.)
Pain and Suffering	30,000
Extra nourishment	5,000
Attendant expenses	5,000
Loss of amenities	10,000
Medical expenses	57,000
Loss of income/permanent disability @ 60%	5,18,400
Transportation charges	4,000
Facial disfiguration	10,000
Total :	6,39,400/-

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7. In the result, the appeal is partly allowed and the compensation awarded is enhanced from Rs. 2,00,000/- to Rs.6,39,400/-. The respondents are directed to deposit the enhanced amount with interest at 7.5% per annum and the same is directed to be deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same forthwith. The claimant is directed to pay the additional court fee for the enhanced portion of the award. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmi/ds

To

1. The I Additional Sub-Judge
Motor Accident Claims Tribunal,
Erode.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.R.Nalliyappan Advocate sr 8387

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