

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1849 of 2008

Venkatesh

....Appellant

Vs

1. Dhinesh
2. Sasikumar

3. M/s. New India Assurance Company Ltd.,
No.149, Bharathiar Road,
Karaikal.

(Respondents 1 and 2 remained absent before the lower Court and set ex-parte. Hence, batta for R1 and R2 not necessary)

....Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 27.04.2007 made in M.A.C.T.O.P No. 103 of 2006 on the file of the Court of the Motor Accidents Claims Tribunal at Karaikal insofar as it relates to the quantum of compensation payable to the appellant.

For Appellant : Mr. R.Vasudevan

For Respondents 1 & 2 : Exparte

For Respondent 3 : Mr.S.Manohar

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the award dated 27.04.2007 passed by the Motor Accident Claims Tribunal, Karaikal in M.A.C.T.O.P No. 103 of 2006.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The appellant sustained injuries on 19.05.2005 as a result of an accident caused by a Mahindra Van bearing Registration No.PY-02-8879 owned by the second respondent and insured with the third respondent. The appellant preferred a claim before the Motor Accidents Claims Tribunal in M.A.C.T.O.P No. 103 of 2006 seeking compensation of Rs.7,00,000/- (Rupees seven lakhs only).

(ii) The Motor Accident Claims Tribunal, by its Award dated 27.04.2007 in MACTOP No. 103 of 2006, directed the third respondent to pay the appellant, a sum of Rs.2,90,913/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation under the following heads:

Head	Amount awarded by the Tribunal
Future loss of income	86,400.00
Medical expenses	1,36,360.00
Purchase of medicines	16,053.00
Transportation Charges	9,100.00
Post-traumatic stress	25,000.00
Loss of partial income	12,000.00
Extra Nourishment	5,000.00
Damage to his clothes	1,000.00
Total	2,90,913.00

(iii) Aggrieved by the award dated 27.04.2007 passed in M.A.C.T.O.P No. 103 of 2006, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Mr.R.Vasudevan, learned counsel for the appellant and Mr.S.Manohar, learned counsel for the third respondent.

4. According to the learned counsel for the appellant, the appellant was an Administrative Officer earning monthly salary of Rs.7,000/- (Rupees seven thousand only) at the time of accident. According to him, due to boycott of Courts, the salary certificate of the appellant could not be filed before the tribunal. According to him, even though the appellant was the Administrative Officer earning monthly salary Rs.7,000/- (Rupees seven thousand only), without considering the same, the Tribunal has erroneously assessed the notional income of the appellant at Rs.24,000/- (Rupees twenty four thousand only) per annum . The learned counsel for the appellant further contended that the

appellant sustained 60% disability and disability certificate-Ex.P12 was also marked before the Tribunal. According to him, without considering the evidence placed by the appellant before the tribunal, the tribunal has erroneously awarded an inadequate compensation.

5. Per contra, the learned counsel for the third respondent-Insurance Company would submit that the compensation awarded by the tribunal to the appellant is a just compensation based on the evidence available on record.

6. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes the following;

a). It is an undisputed fact that the appellant was working as an Administrative Officer in a private concern holding a Masters Degree in Information Technology. In his claim petition, the appellant had disclosed that he was earning monthly salary of Rs.7,000/- (Rupees seven thousand only) and on the date of his chief examination, he has submitted that he was earning monthly salary of Rs.15,000/- (Rupees fifteen thousand only). Since the salary certificate was not produced by the appellant, the tribunal has assessed the monthly income of the appellant on notional basis and assessed the same at Rs.24,000/- (Rupees twenty four thousand only) per annum.

b) The accident is of year 2006. In the considered view of this court, considering the age of the appellant, who was 26 years on the date of the accident and considering his avocation, the Tribunal ought to have assessed the notional income of the appellant at a higher sum.

c) The appellant has sustained head injury, facial injury, segmental injury, fracture of left femur, fracture of both bones in left legs and he has suffered 60% disability as per the disability certificate which is marked as Ex.P-12 before the tribunal. Considering the nature of injuries sustained by the appellant, the tribunal ought to have awarded a higher compensation towards his disability. The Tribunal has awarded disability compensation by applying the multiplier method. Whereas, in the considered view of this Court, the Tribunal ought not to have applied the multiplier method, since even according to the appellant, at the time of accident, he was earning a monthly income of Rs.7,000/- (Rupees seven thousand only) and on the date of his chief examination, he has admitted that he was earning a monthly income of Rs.15,000/- (Rupees fifteen thousand only) and therefore, there is no loss of earning capacity. Instead of applying the multiplier method,

this Court is of the considered view that the Tribunal ought to have applied the disability compensation on percentage of disability basis.

d) Considering the year of the accident, this Court is of the considered view that a sum of Rs.2,000/- (Rupees two thousand only) per percentage of disability, will have to be granted to the appellant towards disability compensation which works out to Rs.1,20,000/- towards 60% disability suffered by the appellant.

e) Considering the nature of injuries sustained by the appellant, this Court is of the considered view that the tribunal ought to have awarded a higher compensation towards pain and suffering, extra nourishment charges, transportation costs. The tribunal has erroneously not granted any compensation towards attender charges and loss of income for the period during which the appellant had to undergo treatment.

7) In the light of the above observations, this Court is of the considered view that the compensation awarded by the tribunal under the impugned award has to be enhanced from Rs.2,90,913/- Rupees two lakhs ninety thousand nine hundred and thirteen only) to Rs.3,67,359.60/-, rounded of to Rs.3,68,000/- (Rupees three lakhs and sixty eight thousand only) as detailed below:

Head	Amount awarded by this Court
Disability assessed 60%	1,20,000.00
Pain and Suffering	30,000.00
Extra nourishment	20,000.00
Medical charges	1,36,359.60
Transportation Charges	20,000.00
Attendant charges	20,000.00
Loss of income 7000x3	21,000.00
Total	3,67,359.60
Rounded of	3,68,000.00

8. In the result,

i) the Appeal is partly allowed by enhancing the compensation awarded by the tribunal from Rs.2,90,913/- to Rs.3,68,000/- . No costs.

ii) the third respondent-Insurance company is directed to deposit the enhanced award amount of Rs.3,68,000/- (Rupees three lakhs sixty eight thousand only) together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount already deposited, to the credit of M.A.C.T.O.P.No.103 of 2006 on the file of the Court of the Motor Accidents Claims Tribunal at Karaikal within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount lying to the credit of M.A.C.T.O.P.No. 103 of 2006 along with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srn
To

1. The Motor Accidents Claims Tribunal,
Karaikal.
- 2.The Record Clerk,
VR Section,
High Court, Madras.

+lcc to Mr.T.Susindran, Advocate Sr.66390
+lcc to Mr.S.Manohar, Advocate Sr.65887

सत्यमेव जयते C.M.A.NO.1849 of 2008

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srg 29/10/2018

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