

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2206 of 2008

N.Nithya

...Appellant

Vs

1.R.Devid Durai Raj

2.The Tamilnadu State Transport Corporation (Coimbatore Division II) Ltd.,
Erode,
Rep. by its Managing Director
Chennimalai Road, Erode - 638 002. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 29.09.2006 passed in M.C.O.P. No.88 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge, F.T.C. No.IV) at Bhavani.

For Appellant : Mr.K.Govi Ganesan

For Respondents : R1- Exparte before the Tribunal
Mr.K.J.Sivakumar for R2

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 29.09.2006 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.IV at Bhavani in M.C.O.P.No.88 of 2006.

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

(i) The appellant sustained grievous injuries as a result of an accident which happened on 14.06.2003 caused by a bus bearing registration No.TN-33-N-1556 owned by the second respondent/transport corporation.

(ii) The appellant preferred a claim before the Motor Accident Claims Tribunal seeking a compensation of Rs.25,00,000/- for the injuries sustained by her.

(iii) The Motor Accident Claims Tribunal by its award dated 29.09.2006 in MCOP.No.88 of 2006, directed the second respondent to pay the appellant a sum of Rs.8,02,000/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation.

(iv) Aggrieved with the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3.Heard, Mr.K.Govi Ganesan, learned Counsel for the Appellant and Mr.K.J.Sivakumar, learned Counsel for the second respondent. Despite service of notice on the first respondent and his name having been printed in the cause list today, there is no representation on the side of the first respondent.

4.According to the learned Counsel for the Appellant, the compensation awarded by the Tribunal under the impugned award is an inadequate compensation. According to him, the injuries sustained by the appellant are grievous in nature and due to the accident caused by the bus owned by the second respondent/transport corporation, the Right foot of the appellant was crushed with the disruption of Tarsal Bones and Tarso meta Tarsal Joints and she had also sustained injuries in her anterior and posterior Tibial Artery at ankle.

5. Further, it is contended that the appellant was a student at Avinashilingam College at Coimbatore at the time of the accident and had great aspirations in life. He further submitted that six operations were performed on the appellant between the period from 14.06.2003 to 15.08.2003 and four Plastic surgeries were also performed on her right foot and also her right foot index finger was also amputated. Further foot bones and knee joints were fixed. Subsequently, surgery was also performed on her to remove the steel rods and steel plates. After amputation of her right foot index finger, a prosthetic foot was also fixed on the appellant.

6. According to him, the appellant was under hospitalization for almost 63 days. Further, the learned counsel for the appellant submitted that due to the injuries sustained as a result of the accident, there was total disfigurement of the right leg of the appellant.

7. He drew the attention of this Court to the discharge summary of Ganga Hospital, Coimbatore viz., Ex.A.11 to A.15 and

also drew the attention of this Court to the deposition of PW2, who is the appellant and PW3 is a Doctor and emphasized the grievous injuries sustained by the appellant. Further, he submitted that even though the doctor had assessed the disability of the appellant at 30% and the disability certificate was marked as Ex.P-34, the Tribunal has without any basis assessed the disability of the appellant only at 15%.

8. Further, he contended that due to the injuries, the appellant is unable to stand even now for more than ten minutes. The present photograph of the appellant was also produced by the learned counsel for the appellant. According to him, the Tribunal has not considered all these factors while assessing the compensation payable to the appellant and has awarded only a sum of Rs.8,02,000/- as compensation to the appellant, which, according to the learned counsel is an inadequate compensation.

9. Per contra, the learned counsel for the second respondent/transport corporation submitted that the compensation awarded by the Tribunal is a just compensation. According to him, as admitted by the learned counsel for the appellant, the appellant is now married and well settled in life in South Korea. Further, the Tribunal has rightly assessed the compensation payable to the appellant and also applied the multiplier method in assessing the compensation.

10. 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 in disputed fact that only due to the rash and negligent driving by the second respondent/transport corporation, the accident had happened, which resulted in injuries sustained by the appellant.

(b) The nature of injuries sustained by the appellant as stated supra by the learned counsel for the appellant has not been disputed by the second respondent/transport corporation before the Tribunal.

(c) As seen from the injuries, they are certainly grievous in nature and has caused disfigurement of the appellant's right leg. The current photograph of the appellant produced by the learned counsel for the appellant also confirms that the appellant had sustained grievous injuries which resulted in amputation of her index finger in her right foot and a prosthetic foot has also been fixed on her.

(d) The Tribunal under the impugned award has awarded Rs.25,000/- towards disfigurement, Rs.25,000/- towards loss of convenience, Rs.50,000/- towards marriage loss, Rs.1,30,000/- towards loss of future earnings by applying the multiplier method, Rs.25,000/- towards pain and suffering, Rs.10,000/-

towards attender charges, Rs.5,36,761/- towards medical expenses (rounded off to Rs.5,37,000/-), Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transportation, in all put together, a sum of Rs.8,02,000/- was awarded as compensation to the appellant.

(e) As stated earlier, the appellant has sustained grievous injuries, which will certainly have an impact on her through out her life. In the considered view of this Court, the compensation awarded by the Tribunal under the heads pain and suffering, loss of conveyance and disfigurement is very low and it has to be enhanced by this Court.

(f) In the considered view of this Court, the compensation awarded under the head pain and suffering is enhanced to Rs.1,00,000/- and under the head disfigurement, this court awards Rs.1,00,000/- and under the head loss of convenience, it is enhanced to Rs.50,000/-, in all put together, the compensation is enhanced by another sum of Rs.1,75,000/- over and above the actual compensation awarded by the tribunal. In respect of compensation awarded by the tribunal under other heads, the same is confirmed by this Court.

11. The Award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.88 of 2006 is enhanced in the following manner:

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Transportation	Rs.5,000/-	Rs.5,000/-
Extra Nourishment	Rs.5,000/-	Rs.5,000/-
Pain and Sufferings	Rs.25,000/-	Rs.1,00,000/-
Loss of income	Rs.1,30,000/-	Rs.1,30,000/-
Disfigurement	-----	Rs.1,00,000/-
Loss of marital prospects,	Rs.50,000/-	Rs.50,000/-
Loss of convenience and	Rs.25,000/-	Rs.25,000/-
Mental agony	Rs.25,000/-	Rs.25,000/-
Medical expenses	Rs.5,37,000/-	Rs.5,37,000/-
Total	Rs.8,02,000/-	Rs.9,77,000/-

12. In the result,

i) the Civil Miscellaneous Appeal is partly allowed. No costs.

ii) the compensation awarded by the tribunal is enhanced from Rs.8,02,000/- to Rs.9,77,000/- along with interest at the rate of 7.5% from the date of claim, till the date of realisation. The enhanced amount shall carry interest at the rate of 7.5% per annum.

iii) The transport corporation is directed to deposit the entire compensation amount awarded by this Court along with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation, less the amount, if any, already deposited, to the credit of MCOP.No.88 of 2006 before the tribunal.

iv) On such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsi/msr

To

1.The Motor Accident Claims Tribunal
Additional District Judge, F.T.C. No.IV, Bhavani.

2.The Section Officer,
Vernacular Section, High Court, Madras.

+1 cc to Mr.K.Govi Ganesan, Advocate Sr.No.69026

+1 cc to Mr.K.J.Sivakumar, Advocate Sr.No.68801

सत्यमेव जयते

C.M.A.No.2206 of 2008

PA(CO)

CSL/13.12.2018

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