



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2644 of 2008

D.Manickam

...Appellant/ Petitioner

Vs

1.P.S.Srikant

(Was set exparte in the Trial Court)

2.New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai 600 001.

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2008 made in MACT.O.P.No.198 of 2006 on the file of II Judge, Motor Accident Claims Tribunal, (Court of Small Causes) Chennai.

For Appellant

: Mrs.P.T.Salim Fathim

For Respondents

: R1 - Exparte

Mr.J.Chandran for R2

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 20.03.2008 passed by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) Chennai in MACT O.P.No.198 of 2006.

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

(i) The appellant sustained injuries on 04.12.2005 as a result of an accident caused by a Motor Cycle bearing registration No.TN-04-L-9340 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in MACT.O.P.No. 198 of 2006 seeking compensation of Rs.7,00,000/-.

(ii) The Motor Accident Claims Tribunal by its Award dated 20.03.2008 in MACT.O.P.No.198 of 2006 directed the



second respondent to pay the Appellant a sum of Rs.82,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

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

3. Heard, Mrs.P.T.Salim Fathima learned counsel for the appellant and Mr.J.Chandran, learned counsel for the second respondent.

4. According to the learned counsel for the appellant, the compensation awarded to the appellant under the impugned award is an inadequate compensation. According to her, the appellant was a Turner & Die Maker by profession and was aged about 50 years, at the time of the accident. The learned counsel for the appellant submitted that due to the accident, the appellant sustained multiple fractures in the right leg thigh bone near hip leading to shortening of leg and restriction of movements of his right leg, knee and hip and multiple internal and external injuries all over the body.

5. Further according to her, the appellant was taking treatment as inpatient in the hospital for more than 58 days. The discharge summary was also marked as Exs.P1 to P3 before the Tribunal. Further she would contend that the disability sustained by the appellant was 40% as per the disability certificate Ex.P5, but the Tribunal has assessed the disability of the appellant only at 35% and has awarded only a meagre compensation of Rs.35,000/- towards disability. She would further contend that the compensation awarded by the Tribunal under the heads pain and suffering, Transport to hospital, extra nourishment charges, damages to clothing, medical expenses and loss of earnings during the period of treatment is also very low.

6. Per contra, learned counsel for the second respondent insurance company would submit that the appellant has been adequately compensated under the impugned Award.

7. 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 only due to the rash



and negligent driving by the driver of the insured vehicle, the accident had happened, which resulted in injuries sustained by the appellant.

b) The nature of the injuries sustained by the appellant referred to supra by the learned counsel for the appellant has not been disputed by the second respondent before the Tribunal.

c) It is seen from the injuries sustained by the appellant, they are grievous in nature. Admittedly, the appellant was hospitalized for more than 58 days. The age and avocation of the appellant has also not been disputed by the second respondent before the Tribunal. The appellant was a Turner & Die Maker by profession. As a Turner & Die Maker, the grievous injuries sustained by the appellant, as a result of the accident, would certainly have impaired his regular work as a Turner & Die maker.

d) The Tribunal has awarded Rs.35,000/- towards permanent disability, Rs.20,000/- towards pain and suffering, Rs.1,500/- towards Transport to Hospital, Rs.4,000/- towards extra nourishment, Rs.500/- towards damages to clothing, Rs.1,000/- towards medical expenses and Rs.20,000/- towards loss of earning during the period of treatment. In all put together a sum of Rs.82,000/- was awarded as compensation to the appellant under the impugned Award.

e) Even though, the appellant has suffered 40% disability as per the disability certificate Ex.P.5, the Tribunal has assessed the disability of the Appellant only at 35% without any basis. In the considered view of this Court that the Tribunal ought to have assessed the disability of the appellant at 40%. No contra evidence has been produced by the second respondent before the Tribunal to disprove the percentage of disability suffered by the appellant. Further considering the year of the accident, this Court is of the considered view that a sum of Rs.2,000/- per percentage of disability will have to be awarded to the appellant instead of Rs.1,000/- granted by the Tribunal under the impugned Award. Therefore, instead of Rs.35,000/- a sum of Rs.80,000/- will have to be awarded towards disability to the appellant.

f) Considering all these facts, this court is of the considered view that the compensation awarded to the appellant under the impugned Award is an in adequate compensation.



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8. In the light of the above observations, this Court is of the considered view that the compensation awarded to appellant under the impugned Award has to be enhanced in the following manner:

Heads	Amount awarded by the Tribunal (Rs)	Modified Award Amount (Rs)
Compensation for Permanent disability	35,000	80,000
Pain and suffering	20,000	40,000
Transport to Hospital	1,500	5,000
Extra Nourishment	4,000	10,000
Damages to clothing	500	1,000
Medical expenses	1,000	10,000
Loss of earning	20,000	40,000
Attendant Charges	-	10,000
Loss of Amenities	-	30,000
Total	82,000	2,26,000

9. In the result,

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

ii) the compensation awarded by the tribunal is enhanced from Rs.82,000/- to Rs.2,26,000/- along with interest at the rate of 7.5% from the date of claim, till the date of realisation.

iii) It is represented that the entire Award amount has already been deposited before the Tribunal. The Insurance company is directed to deposit the enhanced 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 to the credit of MACT O.P.No.198 of 2006 before the tribunal within six weeks from the date of receipt of a copy of this judgment.

iv) On such deposit being made, the appellant is directed to withdraw the amount together with accrued interest lying to the credit of MACT O.P.No.198 of 2006 on



the file of II Judge, Motor Accident Claims Tribunal,
(Court of Small Causes) Chennai by filing an appropriate
application.

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Sd/--

Assistant Registrar(CS vi)

Sub Assistant Registrar

kyl/vsm

To

- 1.The the Motor Accident Claims Tribunal
II Judge, (Court of Small Causes) Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.M.Swamikkannu , Advocate SR.No. 67558

+1cc to Mr.J.Chandran , Advocate SR.No. 67869

C.M.A.No.2644 of 2008

ASK(27/11/2018)