



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2870 of 2008

Manogar

...Appellant/Claimant

Vs

1.Jitender Singh

2.The Divisional Manager,
National Insurance Company Ltd.,
Vellore.

3.N.M.Dhanapal

4.The Divisional Manager,
Oriental Insurance Company Ltd.,
Vellore.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.01.2008 made in MCOP.No.337 of 2004 on the file of the Motor Accident Claims Tribunal (Sub-Court) Tirupattur, Vellore District.

For Appellant	: Mr.M.Malar
For Respondent 2	: Mr.S.Arun Kumar
For Respondent 4	: Mr.J.Chandran
For Respondents 1 & 3	: Notice returned

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 03.01.2008 passed by the Motor Accident Claims Tribunal (Sub-Court) Tirupattur, Vellore District in MCOP.No.337 of 2004.

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

2. The Appellant sustained injuries as a result of an accident that took place on 06.07.2004 caused by a lorry bearing registration No. HR46-E-0164 owned by the first respondent and insured with the second respondent. The Appellant preferred a compensation claim before the Tribunal in MCOP.No.337 of 2004



seeking a compensation of Rs.10,00,000/-. The Motor Accident Claims Tribunal by its Award dated 03.01.2008 in MCOP.No.337 of 2004 directed the second respondent to pay the Appellant a sum of Rs.49,645/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 03.01.2008, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.337 of 2004, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mrs.M.Malar, learned counsel for the Appellant, Mr.J.Chandran, learned counsel for the second respondent and Mr.S.Arun Kumar, learned counsel for the fourth respondent.

5. According to the learned counsel for the Appellant, the Appellant was aged 40 years and was a bus conductor, earning a monthly salary of Rs.7,500/- at the time of the accident. As a result of the accident, the Appellant sustained fracture in his right foot and two bones got fractured. According to the learned counsel for the Appellant, as the result of the accident, the Appellant cannot do his regular work as a bus conductor for a considerable period of time.

6. The learned counsel for the Appellant further contended that even though the disability of the Appellant was assessed at 20% by the Doctor and the disability certificate was marked as Ex.P14 before the Tribunal, the Tribunal has erroneously assessed the disability at 15%, without any basis and awarded only a meagre compensation of Rs.15,000/- towards disability. According to the learned counsel for the Appellant, the compensation awarded to the Appellant towards pain and suffering is also meagre.

7. Per contra learned counsel for the second respondent insurance company would submit that the accident had happened in the year 2008 and the injuries sustained by the Appellant is a simple injury and therefore, the Tribunal has rightly assessed the disability of the Appellant at 15% and has awarded a just compensation.

8. 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) The injuries sustained by the Appellant has not been disputed by the second respondent before the Tribunal.

b) The Doctor has assessed the disability of the Appellant at 20% and Disability certificate has also been filed by the Appellant before the Tribunal which was marked as Ex.P14. No



contra evidence has been produced by the second respondent to disprove the disability of the Appellant. Without any basis, the Tribunal on its own assessed the disability at 15% instead of 20% as assessed by the doctor. Therefore, the disability compensation will have to be awarded to the Appellant for 20% and not for 15% disability. Considering the same, this Court is of the considered view that a sum of Rs.20,000/- will have to be awarded to the Appellant towards disability compensation instead of Rs.15,000/- as awarded by the Tribunal.

c) The Tribunal has also not awarded any compensation towards loss of income during the period of Appellant's treatment and for the period during which he was unable to rejoin duty as conductor of the bus. Considering the nature of injuries sustained by the Appellant, in the considered view of this Court, the Appellant would not have been able to go for regular duty, at least for a period of two months from the date of the accident. Since the Tribunal has awarded only a sum of Rs.5,000/- towards compensation for loss of earning. But, in the considered view of this Court, a sum of Rs.15,000/- will have to be granted towards loss of income instead of Rs.5,000/- as awarded by the Tribunal.

d) The Tribunal has awarded only a sum of Rs.4,000/- towards pain and suffering which in the considered view of this Court is a meagre amount. This Court fixes the compensation towards pain and suffering of the Appellant at Rs.15,000/- instead of Rs.4,000/- granted by the Tribunal under the impugned Award.

9. In the light of the above observations, the Award passed by the Motor Accident Claims Tribunal in MCOP.No.337 of 2004 has to be enhanced in the following manner:

Head	Amount awarded by the Tribunal	Modified Award Amount
Pain and Suffering	Rs.4,000/-	Rs.15,000/-
Nutrition and Transportation costs	Rs.5,000/-	Rs.5,000/-
For Disability	Rs.15,000/-	Rs.20,000/-
Medical Expenses	Rs.10,645/-	Rs.10,645/-
Loss of income during the period of treatment	Rs.5,000/-	Rs.15,000/-
Mental agony	Rs.5,000/-	Rs.5,000/-
Attender Charges	Rs.5,000/-	Rs.5,000/-
Total	Rs.49,645/-	Rs.75,645/-

10. In the result, the appeal is partly allowed by



modifying the award amount from Rs.49,645/- to Rs.75,645/- and the second respondent is directed to deposit the Award amount of Rs.75,645/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, to the credit of MCOP.No.337 of 2004 on the file of the Motor Accident Claims Tribunal, (Sub-Court) Tirupattur, Vellore District, 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 MCOP.No.337 of 2004 on the file of the Motor Accident Claims Tribunal, (Sub-Court) Tirupattur, Vellore District by filing an appropriate application. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

nl

To

1.The Motor Accidents Claims Tribunal,
Sub-Court, Tirupattur, Vellore District

Copy TO

The Section Officer,Vernacular Section, Madras High Court.

+lcc to Mr.S.Arunkumar, Advocate SR.No.65630

+lcc to Mr.M.Malar, Advocate SR.No.65772

C.M.A.No.2870 of 2008

SSI (CO)

GMV (29/10/2018)