

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1109 of 2010

Senguttuvan ...Appellant

Vs.

1. P.Thangarajan

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

Prayer:

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the M.C.O.P.No.1107 of 2003, dated 04.10.2005 on the file of the Motor Accident Claims Tribunal, 3rd Judge, Small Causes Court, Chennai

For Appellant : Mr.S.Parthasarathy

For Respondents : Ms.R.Sreevidya for R2.
: No appearance for R1.

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Impugned Award dated 04.10.2005 passed by the Motor Accident Claims Tribunal, 3rd Judge, Small Causes Court, Chennai in M.C.O.P.No.1107 of 2003.

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

(i) The appellant sustained injuries on 23.07.2002, while he was travelling as a pillion rider in the motor cycle bearing Registration No.TN-25-X-7617 owned by the 1st Respondent and insured with the 2nd Respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.1107 of 2003 seeking compensation of Rs.5,00,000/- for the injuries sustained by him, as a result of an accident caused by a vehicle insured with the 2nd Respondent. The Motor Accident Claims Tribunal by its award dated 04.10.2005 in M.C.O.P.1107 of 2003 directed the 2nd Respondent to pay the appellant a sum of Rs. 2,58,000/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of realisation.

(ii) Aggrieved by the quantum of compensation awarded under the award dated 04.10.2005 passed in M.C.O.P.No.1107 of 2003, the instant appeal has been filed by the Appellant seeking enhancement of compensation.

3. Heard Mr.S.Parthasarathy, learned counsel for the appellant and Ms.R.Sreevidhya, learned counsel for the 2nd Respondent. The 1st Respondent being the owner of the vehicle has remained exparte before the Tribunal as well as before this Court.

4. According to the learned counsel for the appellant, the appellant sustained grievous injuries and

has suffered fractures in 6th, 7th, 8th and 12th spinal cord and also suffered grievous injuries in his right shoulder as well as in his right knee and he was aged 28 years and was a cable TV Operator at the time of accident.

5. Further, according to the learned counsel for the appellant, the compensation awarded by the Tribunal under the impugned award is an inadequate compensation. He also submitted that the compensation awarded towards Disability, Pain and Sufferings, Extra Nourishment Charges, Attender charges and Loss of earning during the period of treatment is very low. He would further contend that no compensation was awarded by the Tribunal for Loss of Amenities under the impugned award.

6. Per contra, the learned counsel for the 2nd respondent / Insurance company would submit that the compensation awarded by the Tribunal under the impugned award is a just compensation. She would further submit that the disability assessed by the Doctor at 55% was accepted by the Tribunal under the impugned award and only after considering the same, the Tribunal has awarded Rs.60,000/-, as Permanent Disability Compensation to the appellant. Insofar as the other heads of compensations are concerned, according to her, the Tribunal has rightly assessed the compensation and therefore, no interference is called for from this Court.

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 not in dispute that the appellant was 28 years and was a Cable TV Operator at the time of accident. The nature of injuries mentioned supra and referred to by the learned counsel for the appellant is not disputed by the 2nd Respondent / Insurance Company before the Tribunal. Considering the age, avocation and the nature of injuries sustained by the appellant, in the considered view of this Court, the Tribunal ought to have awarded higher compensation towards Pain and Sufferings, Loss of Earning during the period of Treatment and Transportation cost.

(b) Admittedly, the Appellant has sustained multiple fractures in his spinal cord and was hospitalised for almost three months and the discharge summary of the concerned hospital was also marked as Exs.P.1 and P.2 before the Tribunal. Having sustained grievous injuries, the appellant would have certainly been unable to do his regular work as a Cable TV Operator for a quite some time and he would have also suffered enormous on account of the injuries.

(c) Therefore, in view of the above findings, the amount of Rs.15,000/- awarded by the Tribunal under the head of 'Loss of Earnings' is inadequate, hence a sum of Rs.25,000/- is awarded. Further, the amount of Rs.10,000/- and Rs.3,000/- awarded by the Tribunal towards Pain and Sufferings and Transportation are also inadequate. Hence, the same is enhanced to Rs.30,000/- and Rs.5,000/- respectively. Besides the above, the Tribunal has failed to award any amount under the head 'Loss of Amenities', therefore, a sum of Rs.8,000/- is awarded by this Court under the Head 'Loss of Amenities'. However, it is made clear that except for the above said enhancements, the amount awarded by the Tribunal under various other heads remain unaltered.

9. In the light of the above observations, this Court is of the considered view that the award dated 14.10.2005 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.1107 of 2003 is enhanced in the following manner:

Sl.No

Heads

Amount awarded by the Tribunal

Amount enhanced by this Court

Amount awarded by this Court.

1.

Loss of Earning during treatment period

15,000

10,000

25,000

2.

Transportation

3,000

2,000

5,000

3

Extra Nourishment

5,000

-

5,000

4

Medical Expenses

1,20,000

-

1,20,000

5

Attender Charges

10,000

-

10,000

6

Pain and Sufferings

10,000

30,000

40,000

7

Permanent disability

60,000

-

60,000

8

Loss of Future earning

25,000

-

25,000

9

Loss of income and Mental agony

10,000

-

10,000

10

Loss of Amenities

-

8,000

8,000

TOTAL

2,58,000

50,000

3,08,000

In the result, the award is enhanced from Rs.2,58,000/- to Rs.3,08,000/- [Rupees Three Lakhs and Eight Thousand only] and the 2nd respondent is directed to deposit the enhanced amount together with interest at 7.5% per annum from the date of claim till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The Second Respondent is directed to deposit the entire enhanced compensation awarded by this Court, along with accrued interest thereon to the credit of MCOP.No.1107 of 2003, after adjusting the amount, if any, already deposited and on such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application before the Tribunal.

Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

08.10.2018

Speaking order / Non Speaking order

Index: Yes / No

Internet: Yes / No

tsg/ssd

To

1. The Motor Vehicles Accidents Claims Tribunal,
3rd Judge, Court of Small Causes,
Chennai

2.The Record Clerk,
VR Section,
High Court, Madras.

ABDUL QUDDHOSE,J.,

ssd

C.M.A.No.1109 of 2010

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