

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3860 of 2008

D.Selvanathan

...Appellant/Petitioner

Vs

1. M/s.Devi Cabs,
No.40/1, 12th Avenue,
Ashok Nagar, Chennai - 83

2. The Oriental Insurance Co.Ltd.,
Motor III Party Claims Office,
Oil Mill Stop, State Bank of India Upstairs,
Jawaharlal Nehru Salai, Thiruvallore.

...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee in M.C.O.P.No.93 of 2005 dated 29.12.2006.

For Appellant : Ms.Y.Jayanthi Bhaskar
for J.Mahalingam

For Respondents : R1- Not Ready in notice
Mr.J.Chandran for R2

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 29.12.2006 passed by the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee in M.C.O.P.No.93 of 2005.

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

(i) The appellant sustained injuries on 01.12.2004, as a result of an accident caused by a car bearing registration No. TN-09-AD-5655 owned by the first respondent and insured with the 2nd respondent.

(ii) The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No. 93 of 2005 seeking a compensation of Rs.6,00,000/-.

(iii) The Motor Accident Claims Tribunal by its award dated 29.12.2006 in M.C.O.P.No. 93 of 2005, directed the 2nd respondent to pay the appellant a sum of Rs.1,32,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of the realisation and also awarded costs.

(iv) 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, Ms.Y.Jayanthi Bhaskar, learned Counsel for the Appellant and Mr.J.Chandran, learned Counsel for the second respondent. The 1st respondent has remained ex-parte, both before the Tribunal as well as this Court.

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 her, the appellant sustained fracture of left clavicle, fracture of 8th and 9th ribs on left side, rupture of spleen, severe abdominal injuries and injuries in the left knee and other multiple injuries all over the body.

5. According to her, at the time of the accident, the appellant was 50 years old and was working as a coolie, earning Rs.250/- per day. Despite the grievous injuries sustained by the appellant as a result of the accident, the Tribunal has awarded only a sum of Rs.1,32,000/- as compensation.

6. According to her, the compensation awarded to the appellant under the heads pain and suffering, transportation costs, loss of earnings, extra nourishment costs, is very low. Further, she would contend that no compensation was awarded to the appellant for loss of amenities and attender charges.

7. Per contra, learned counsel for the 2nd respondent insurance company would submit that no documentary evidence was produced by the appellant before the Tribunal to prove that the appellant was earning Rs.250/- per day as a coolie. Further, he would contend that considering the year of the accident, the Tribunal has rightly assessed the compensation payable to the appellant under the impugned award.

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) It is a disputed fact that the accident happened only due to the rash and negligent driving by the driver of the insured vehicle.

(b) The nature of injuries sustained by the appellant referred to supra has also not been disputed by the 2nd respondent before the Tribunal.

(c) As seen from the injuries sustained by the appellant, they are serious in nature which would have certainly impaired the appellant from performing his regular avocation as a coolie.

(d) The Tribunal has awarded Rs.55,000/- towards disability compensation for 55% disability suffered by the appellant, as a result of the accident, Rs.25,000/- was awarded towards pain and suffering, Rs. 1000/- was awarded towards transportation cost, Rs.50,000/- was awarded towards loss of earning, Rs.1,000/- was awarded towards nutrition under the impugned award.

(e) In the considered view of this Court, the compensation awarded towards pain and sufferings under the impugned award has to be enhanced to Rs.45,000/- from Rs.25,000/- and towards the loss of earnings, considering the grievous nature of injuries and the avocation of the appellant, the compensation awarded has to be enhanced from Rs.50,000/- to Rs.1,00,000/- and under the head nutrition, the same is hereby enhanced from Rs.1000/- to Rs.10,000/-.

(f) As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of amenities and attendant charges. As observed earlier, the injuries suffered by the appellant are grievous in nature. This Court also directed the appellant to be present in Court today. The appellant is personally present in the Court today. On seeing the appellant, this Court is of the considered view that the injuries sustained by the appellant, as a result of the accident are indeed grievous in nature. Therefore the Tribunal ought to have awarded compensation to the appellant towards loss of amenities and attendant charges. In the considered view of this Court, a sum of Rs.30,000/- will be an adequate compensation to the appellant for loss of amenities and a sum of Rs.10,000/- will be an adequate compensation for attendant charges.

9. Thus in all, the compensation awarded to the appellant is enhanced in the following manner as tabulated below:

Sl. No.	Amount awarded by the tribunal Rs.	Amount Awarded by this Court Rs.
Disability-55%	55,000	55,000
Pain and suffering	25,000	45,000
Loss of amenities	-	30,000
Transportation costs	1,000	5,000
Loss of earnings	50,000	1,00,000
Nutrition	1,000	10000
Attender charges	-	10,000
Total	1,32,000	2,55,000

10. In the light of the above observations, this Court enhances the compensation awarded to the appellant from Rs.1,32,000/- to Rs.2,55,000/- along with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

11. In the result,

(i) this appeal is partly allowed. No costs. Consequently, connected CMP.No.3508 of 2017 is closed.

(ii) the compensation awarded by the tribunal is enhanced by this Court from Rs.1,32,000/- to Rs.2,25,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(ii) The Insurance Company is directed to deposit the entire 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.93 of 2005 before the tribunal.

(iii) On such deposit being made, the appellant is directed to withdraw the same on filing appropriate application.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

msr/sbn

To

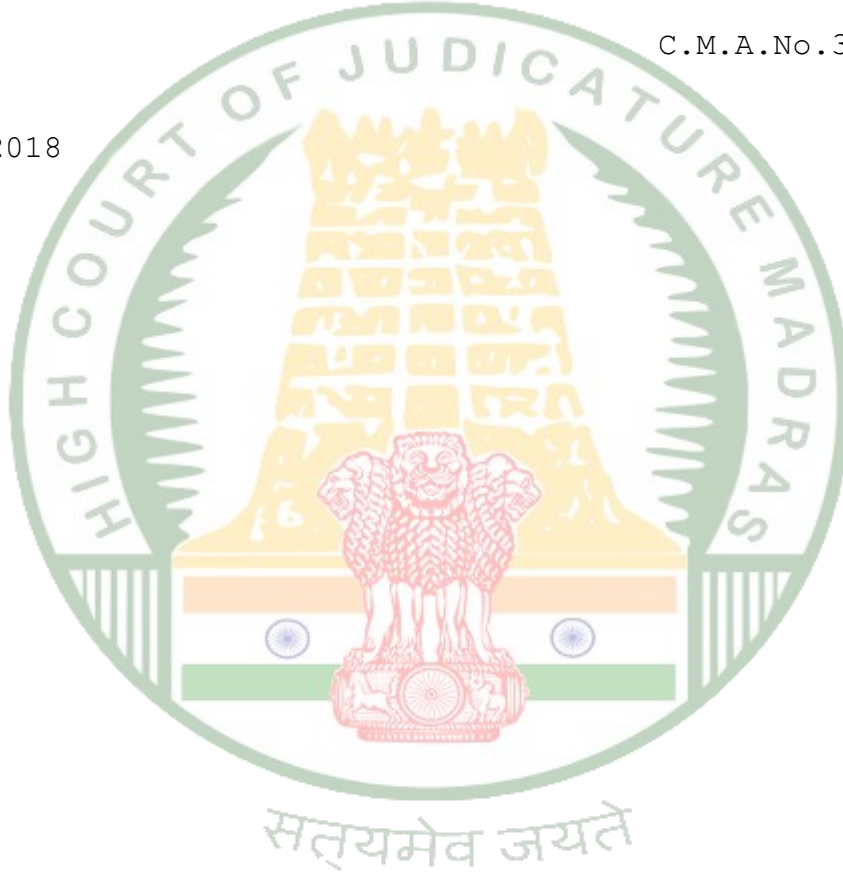
1. The Motor Accident Claims Tribunal,
Subordinate Judge,
Poonamallee
2. The Record Clerk,
Vernacular Section,
High Court, Madras. (2 Copies)

+1cc to Mr.J.Chandran, Advocate, S.R.No.67870

+2cc to Mr.J.Mahalingam, Advocate, S.R.No.68113

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SAI (CO)
CS/26/10/2018



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