

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3928 of 2008

Thangarasu

...Appellant

Vs

1.D.Thiyagarajan

2.The Branch Manager,
National Insurance Company Ltd.,
Puducherry.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order passed in M.A.C.T.O.P.No.150 of 2006 dated 09.07.2007 passed by the Principal Sub Judge, Motor Accident Claims Tribunal, Pondicherry.

For Appellant : Mr.S.Parthasarathy

For Respondents : R1- Disd
Mr.Srinivasa Ramalingam for R2

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 09.07.2007 passed by the Motor Accident Claims Tribunal, Principal Sub Judge, Pondicherry in M.A.C.T.O.P.No.150 of 2006.

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 01.08.2005 caused by an auto bearing Registration No.PY-01-S-4290 owned by the first respondent and insured with the second respondent. The Appellant was travelling in the insured auto, at the time of the accident. The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.150 of 2006 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal by its Award dated 09.07.2007 passed in M.A.C.T.O.P.No.150 of 2006, directed

the second respondent to pay the Appellant a sum of Rs.69,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of the realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned Award dated 09.07.2007 passed in M.A.C.T.O.P.No.150 of 2006, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3.Heard, Mr.S.Parthasarathy, learned Counsel for the Appellant and Mr.Srinivasa Ramalingam, learned Counsel for the second respondent.

4.According to the learned Counsel for the Appellant, the Appellant sustained crush injuries on his left foot and also sustained multiple injuries all over the body which were grievous in nature. Further, the accident having taken place in the year 2005, the Tribunal ought to have awarded a higher compensation towards disability suffered by the Appellant who was aged 37 years and was a tractor driver at the time of the accident.

5.Per contra, the learned Counsel for the second respondent would contend that the compensation awarded to the Appellant under the impugned Award is a just compensation. According to the learned counsel for the second respondent, no documentary evidence was placed by the Appellant before the Tribunal to disprove that he was a tractor driver and that he was earning a daily income of Rs.200/-.

6.This Court has 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 the accident happened only due to the rash and negligent driving by the driver of the vehicle which was insured with the second respondent.

(b) The nature of injuries sustained by the Appellant referred to supra has not been disputed by the second respondent before the Tribunal.

(c) The Appellant has filed his heavy vehicle driving license which was marked as Ex.P3 before the Tribunal.

(d) In the claim petition, he disclosed that he was a tractor driver and his age was 37 years at the time of the accident. No contra evidence has been produced by the second respondent before the Tribunal to disprove the claim of the Appellant that he was aged 37 years and his avocation was a tractor driver.

(e) The accident happened on 01.08.2005. The Tribunal has awarded Rs.40,000/- towards partial permanent disability, Rs.10,000/- towards pain and suffering and mental agony, Rs.10,000/- towards medical expenses, travelling expenses and extra nourishment charges, Rs.9,000/- towards loss of income for three months. In all put together total compensation of Rs.69,000/- was awarded to the Appellant under the impugned Award.

(f) The Appellant has produced the disability certificate dated 23.08.2006 before the Tribunal, which was marked as Ex.P17. As per the disability certificate, the Appellant has suffered 40% disability as a result of the accident. The Tribunal has awarded Rs.40,000/-, on a lump sum basis as compensation for partial permanent disability at the rate of Rs.1,000/- per percentage of disability. 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 an adequate compensation payable to the Appellant for the 40% disability. Therefore, this Court is of the considered view that the compensation Awarded by the Tribunal towards partial permanent disability is enhanced from Rs.40,000/- to Rs.80,000/-.

(g) In respect of other heads of compensation awarded by the Tribunal, this Court is of the considered view that it is a just compensation. Therefore, this Court is not interfering with the compensation awarded under other heads.

8. The Award passed by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.150 of 2006 is enhanced by this Court in the following manner:

Heads	Amount awarded by the tribunal	Modified Award Amount
Loss of Partial Permanent Disability	Rs. 40,000/-	Rs. 80,000/-
Loss of pain and suffering, mental agony	Rs. 10,000/-	Rs. 10,000/-
Loss of medical expenses, travelling expenses and Extra nourishment charges	Rs. 10,000/-	Rs. 10,000/-
Loss of income (for 3 months)	Rs. 9,000/-	Rs. 9,000/-
Total	Rs. 69,000/-	Rs.1,09,000/-

9. In the light of the above observations, the appeal is partly allowed by enhancing the Award amount from Rs.69,000/- to

Rs.1,09,000/- and the second respondent is directed to deposit the modified Award amount of Rs.1,09,000/- 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 M.A.C.T.O.P.No.150 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Pondicherry, within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of M.A.C.T.O.P.No.150 of 2006 by filing an appropriate application. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

arb/nl

To

1.Motor Accident Claims Tribunal,
Principal Sub Judge,
Pondicherry.

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

+1cc to Mr.S.Parthasarathy, Advocate sr.no.67301

+1cc to Mr.Srinivasa Ramalingam, Advocate sr.no.67602

C.M.A.No.3928 of 2008

nr 01/11/2018

सत्यमेव जयते

WEB COPY