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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2561 of 2010

Thirupadhi

... Appellant/Petitioners/Claimants

Vs

1.R.Baskaran

2.The Branch Manager,

The Oriental Insurance Company,

Dhuvaraka No.79, N.H.Road,

Chennai - 600 034.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.01.2010 and made in M.C.O.P.No.465 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan

For Respondents: R1 - set exparte

Mrs.R.Sree Vidya 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 impugned Award dated 19.01.2010 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Krishnagiri in M.C.O.P.No.465 of 2006.

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

(i) The Appellant sustained grievous injuries on 08.04.2004, as a result of an accident caused by a tanker lorry bearing Registration No.TN-20-W-3562 owned by the first respondent and insured with the second respondent.

(ii) The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.465 of 2006 seeking a compensation of Rs.20,00,000/-.

(iii) The Motor Accidents Claims Tribunal by its Award



dated 19.01.2010 in M.C.O.P.No.465 of 2006 directed the second respondent to pay the Appellant a sum of Rs.3,53,900/- together with interest at the rate of 7.5% per Annum from the date of claim till the date of the realisation.

(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, Mr.Mukund R.Pandiyan, learned Counsel for the Appellant and Mrs.R.Sree Vidya, learned Counsel for the second respondent. The first respondent being the owner of the tanker lorry has remained exparte both before the Tribunal as well as this Court.

4. According to the learned Counsel for the Appellant, the compensation awarded by the Tribunal to the Appellant under the impugned Award is an inadequate compensation. According to him, the Appellant had to amputate his left leg, as a result of the accident and he also sustained fracture in his left hand and injuries all over his body. According to him, the Appellant was a minor, aged 15 years at the time of the accident.

5. He would further submit that due to the injuries and fractures sustained by the appellant, he was fixed with an artificial limb, due to which, he is unable to lead a normal life as he also lost his future earning capacity. According to him, considering all these factors, the Tribunal ought to have awarded adequate compensation towards pain and suffering, attender charges, future medical expenses to be incurred for replacement of the artificial leg.

6. According to the learned Counsel for the Appellant, at the time of filing the appeal, the cost of an artificial leg (limb) is Rs.50,000/. Further he would contend that under the impugned Award, the Tribunal has not adopted the multiplier method in assessing the compensation but, instead, has awarded a meagre lumpsum compensation of Rs.3,00,000/- towards the injuries and amputation of the leg.

7. The learned Counsel for the Appellant also drew the attention of this Court by relying upon a judgment of the Apex Court in the case of, Dinesh Singh vs. Bajaj Allianz General Insurance Company Limited, reported in 2014 (1) TN MAC 641 and referred to the compensation awarded by the Honourable Supreme Court for a non-fatal accident under various heads of claim and submitted that applying the principles laid down under the said judgment, the compensation awarded to the Appellant has to be enhanced.

8. Per contra, the learned Counsel for the second



respondent would submit that the compensation awarded by the Tribunal under the impugned Award is a just compensation. According to her, the Appellant was a minor aged 15 years at the time of the accident. Further she would submit that no evidence has been let in by the Appellant before the Tribunal to prove that he would have suffered loss of future earning capacity and no proof was also filed to prove that the Appellant will have to incur future medical expenses for replacement of his artificial leg. According to her, the compensation awarded by the Tribunal under other heads is a just compensation.

9. 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 age and nature of injuries sustained by the Appellant as a result of the accident caused by the insured vehicle has not been disputed by the second respondent before the Tribunal. Admittedly, the Appellant had to amputate his left leg and also sustained fracture on his left hand and also sustained multiple injuries all over the body as a result of the accident. The appellant was aged 15 years and was studying 10th standard at the time of the accident. Having got his left leg amputated, as rightly contended by the learned Counsel for the Appellant, he would have certainly not been able to lead a normal life and earn his livelihood as a normal person.

(b) The Tribunal under the impugned Award has awarded a lump sum compensation of Rs.3,00,000/- towards the injuries and for amputation of leg suffered by the Appellant and for other damages. Considering the nature of injuries sustained by the Appellant and considering the fact that one of his legs got amputated, in the considered view of this Court, the Tribunal ought to have adopted multiplier method in assessing the compensation towards loss of income. Under the impugned Award, the Tribunal has awarded a sum of Rs.25,000/- as compensation towards pain and suffering, a sum of Rs.15,000/- towards extra nourishment and transport cost.

(c) In the considered view of this Court, considering the nature of injuries sustained by the Appellant the compensation awarded by the Tribunal towards pain and suffering, extra nourishment charges and transportation cost has to be enhanced. Therefore, under the caption 'pain and suffering' the compensation awarded by the tribunal is enhanced from Rs.25,000/- to Rs.75,000/- and towards extra nourishment charges and transportation cost, the amount awarded by the tribunal is enhanced from Rs.15,000/- to Rs.25,000/-.

(d) It is an admitted fact that the Appellant is fixed with an artificial leg due to the amputation of his leg. Being an artificial leg, it has to be replaced once it becomes old/damaged. But under the impugned Award, no compensation has



been awarded by the Tribunal towards replacement of the artificial limb. In the considered view of this Court, a sum of Rs.50,000/- will have to be paid to the Appellant towards replacement of artificial limb. Under the impugned Award, the Tribunal has not awarded any compensation towards attender charges and loss of marital prospects.

(e) In the considered view of this Court, a sum of Rs.50,000/- will be an adequate compensation to the Appellant towards attender charges and a sum of Rs.20,000/- is awarded for loss of marital prospects and further under the head 'loss of amenities', this Court awards a sum of Rs.50,000/- to the appellant

(f) The Honourable Supreme Court in the judgment cited by the learned Counsel for the Appellant in the case of Dinesh Singh Vs. Bajaj Allianz General Insurance Company Limited, reported in 2014 (1) TN MAC 641, in a similar case, where the victim had to amputate his leg, a higher compensation was awarded under various heads, but in that judgment, the claimant was a B.E., degree holder and was working as an Engineer and earning a sum of Rs.17,200/- per month and he suffered 60% disability. Even though the facts and circumstances of that case are different from the facts of this case, the common factor in both cases is that the victims in both the cases suffered amputation of leg. Even though the same amount of compensation cannot be fixed for the instant case, considering the fact that the appellant was only 15 years and was only a 10th standard student, after perusing the impugned award, this Court is of the considered view, as discussed earlier, the compensation under various heads will have to be enhanced in favour of the appellant .

(g) Under the impugned Award the Tribunal has awarded a lump sum compensation towards loss of income suffered by the Appellant but has not applied the multiplier method and has also not assessed the monthly income of the Appellant.

(h) Considering the year of the accident which is in the year 2004, this Court fixes the annual income of the Appellant as Rs.30,000/-. Considering the age of the Appellant who was 15 years at the time of the accident, 15 multiplier has to be adopted following the judgment rendered in (Sarla Verma and others Vs. Delhi Transport Corporation and another) reported in 2009 ACJ 1298 and a sum of Rs.4,50,000/- will have to be awarded as compensation to the Appellant towards loss of income.

10. Thus, the compensation awarded by the Tribunal has to be enhanced by this Court in the following manner:



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Sl. No.	Amount awarded by tribunal	Enhanced award passed by this Court
Lumpsum compensation (for injuries, amputation and other compensation)	Rs.3,00,000/-	Rs.4,50,000/- for Loss of income (Rs.30,000/-x15)
Pain and suffering	Rs. 25,000/-	Rs. 75,000/-
Extra Nourishment charges & Transport costs	Rs. 15,000/-	Rs. 25,000/-
Medical expenses	Rs. 13,900/-	--
Loss of amenities	--	Rs. 50,000/-
Medical expenses to be incurred for replacement of Artificial limb	--	Rs. 50,000/-
Attender charges	--	Rs. 50,000/-
Marriage prospects	--	Rs. 20,000/-
Total	Rs.3,53,900/-	Rs.7,20,000/-

11. In the light of the above observations, the compensation awarded by the Tribunal under the impugned Award is enhanced from Rs.3,53,900/- to Rs.7,20,000/- along with interest at the rate of 7.5% per annum on the enhanced amount.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation granted by the tribunal is enhanced from Rs.3,53,900/- to Rs.7,20,000/- along with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) It is represented that the amount awarded by the tribunal has already been deposited and the same has been withdrawn by the appellant.

(iv) The second respondent Insurance Company is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the Appellant is permitted



to withdraw the enhanced amount along with interest and proportionate costs by filing an appropriate application before the Tribunal.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Krishnagiri.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 70683

+1cc to Mr.Mukund R.Pandiyar, Advocate, S.R.No. 70066

C.M.A.No.2561 of 2010

KJI (CO)
GN(03/12/2018)