

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2659 of 2010

M.Chellammal

...Appellant

Vs

1.S.Sathya moorthy

2.The New India Assurance Co., Ltd.,
Motor Third Party Claims Office,
No.45, Moore Street, Chennai - 1.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.02.2010 made in MACTOP.No.747 of 2006 on the file of the Vth Judge, (Motor Accident Claims Tribunal (Small Causes Court) Chennai.

For Appellant : Mr.Arun dattan
for M/s.C and K Law Firm
For Respondent 2 : Mrs.Srividhya
Respondent1 : set ex parte

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 08.02.2010 passed by the Motor Accident Claims Tribunal (5th Court of Small Causes, Chennai) in MCOP.No.747 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 19.01.2006 caused by a car bearing registration No.TN07-AV-0811 owned by the first respondent and insured with the second respondent. The Appellant preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.747 of 2006 seeking a compensation of Rs.3,00,000/- which was restricted to Rs.2,50,000/-. The Motor Accident Claims Tribunal by its Award dated 08.02.2010 in MCOP.No.747 of 2006 directed the second respondent to pay the Appellant a sum of Rs.70,000/- 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 08.02.2010 in MCOP.No.747 of 2006, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.Arun Dattan, learned counsel for the Appellant and Mrs.R.Srividhya, learned counsel for the second respondent, Insurance Company.

5. According to the learned counsel for the Appellant, the compensation awarded by the Tribunal under the impugned Award is an inadequate compensation. According to the learned counsel for the Appellant, the Appellant had suffered fracture over right foot, nervous system completely damaged over right foot, dislocation over right elbow, serious head injury and multiple injuries all over the body. According to the learned counsel for the Appellant, the Appellant also took treatment as an inpatient in Royapettah Government Hospital from 19.01.2006 to 04.02.2006 as evidenced by Ex.P1 to P2 due to the injuries sustained by the Appellant as a result of the accident.

6. The learned counsel for the Appellant would also contend that the Appellant is not in a position to do his normal avocation as a labourer due to the physical disabilities, as a result of the accident. According to the learned counsel for the Appellant, the Tribunal has awarded only a meagre amount of Rs.8,000/- towards loss of income, Rs.4,000/- towards transport to hospital and extra nourishment and Rs.15,000/- towards pain and suffering. According to the learned counsel for the Appellant, the Tribunal has also erroneously awarded only a meagre amount of Rs.40,000/- towards permanent disability, even though the Appellant suffered 50% disability, as a result of the injuries sustained by him, due to the accident.

7. The learned counsel for the Appellant would further contend that no future medical expenses was awarded to the Appellant under the impugned Award. According to the learned counsel for the Appellant, considering the nature of injuries sustained by the Appellant and his avocation, the Tribunal ought to have applied the multiplier method in assessing the compensation.

8. Per contra, learned counsel for the second respondent would contend that the Appellant was aged 60 years at the time of accident which happened in the year 2006. According to the learned counsel for the second respondent, no documentary evidence has been produced by the Appellant before the Tribunal to prove that he was earning Rs.100/- per day as a labourer amounting to Rs.3,000/- per month approximately. According to the

learned counsel for the second respondent, the Tribunal has rightly assessed the compensation payable to the Appellant.

9. This Court by its Order dated 18.09.2018 directed the Appellant to be present before this Court on 26.09.2018 (today). The learned counsel for the Appellant submits that despite his best efforts, he is unable to contact his client (Appellant).

10. 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) Despite best efforts made by the learned counsel for the Appellant, he is unable to contact his client (Appellant). In such circumstances, this Court will have to decide the appeal based on the available records.

b) The Appellant was aged 60 years, at the time of the accident which happened on 19.01.2006. In the claim petition as well as in his deposition, the Appellant has claimed that he was a labourer and earning Rs.100/- per day which amounts to Rs.3,000/- per month approximately. No documentary evidence has been produced by the Appellant before the Tribunal to show that he was a labourer and that he was earning Rs.100/- per day. Since the Appellant did not produce any documentary evidence, considering the year of the accident, the Tribunal has assessed the notional monthly income of the Appellant at Rs.2,000/-. This Court is of the considered view that the Appellant himself has claimed only Rs.3,000/- as his monthly income and therefore, the assessment of the notional monthly income of the Appellant as Rs.2,000/- is a correct assessment.

c) Further as directed by this Court, the Appellant is not present before this Court today and the learned counsel for the Appellant is also unable to inform the Appellant about the directions given by this Court, calling upon the Appellant to be personally present before this Court.

d) As seen from Ex.P2, Discharge Summary, the Appellant has suffered fracture of base of 3rd, 4th & 5th metatarsal, fracture of neck of 1st and 2nd metatarsal right foot, laceration over web space of 1st and 2nd and was treated as inpatient from 20.01.2006 to 04.02.2006.

e) The Tribunal has considered the nature of injuries sustained by the Appellant and only thereafter, has passed the impugned Award granting compensation to the Appellant towards loss of earning, transport to hospital and extra nourishment, damages to clothing and materials and pain and suffering. In addition, the Tribunal has also awarded compensation amounting to Rs.40,000/- towards disability suffered by the Appellant due to the injuries as a result of the accident. In all put together, the Tribunal has

awarded Rs.70,000/- as compensation to the Appellant.

f) Considering the age of the Appellant, at the time of the accident and the Appellant having not produced sufficient evidence before the Tribunal to get a higher compensation, this Court is of the considered view that the impugned Award which is a reasoned and well considered Award does not call for any interference by this Court.

11. Accordingly, there is no merit in the instant Appeal and the appeal is dismissed without costs. It is brought to the notice of this Court that the compensation awarded by the Tribunal under the impugned Award has already been deposited by the second respondent and the Appellant has also already withdrawn the amount deposited by the Tribunal.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Vth Court of Small Causes Court, Chennai.

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

+1cc to Mrs.Srividhya , Advocate SR.No.67505

C.M.A.No.2659 of 2010

ASK(31/10/2018)

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