

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO. 744 OF 2011

Ganapathi

.. Appellant/Petitioner

Vs

1. S.Sakthivel

2. National Insurance Company Ltd.,
74-A, paramathy Road,
Namakkal.

(R1 set exparte)

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 22.2.2010 passed in MCOP.No.76 of 2009 by the Sub Judge, Tiruchengode, Motor accident Claims Tribunal.

For appellant : Mr.R. Marudhachalamurthy

For Respondents : Mrs.N.B.Surekha for R2
R1-Exparte

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 22.2.2010 passed by the Motor Accident Claims Tribunal (Sub Court, Thiruchengode) in MCOP.No.76 of 2009.

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

(i) The appellant sustained injuries as a result of an accident caused by a lorry bearing Registration No.TN-28-P-5751 owned by the 1st respondent and insured with the 2nd respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.76 of 2009 seeking a compensation of Rs.10,00,000/-.

(ii) The Motor Accident Claims Tribunal, by its Award dated 22.2.2010 in MCOP.No.76 of 2009 directed the 2nd respondent to pay the appellant, a sum of Rs.4,13,258/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the quantum of compensation awarded by the tribunal under its Award dated 22.2.2010 in MCOP.No.76 of

2009, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Mr.R.Marudhachalamurthy, learned counsel for the appellant and M/s.N.B.Surekha, learned counsel for the 2nd respondent.

4. According to the learned counsel for the appellant, the tribunal has erroneously fixed the multiplier as 16, instead of 18 and has not followed the judgment of the Honourable Supreme Court in (Sarla Verma and others Vs. Delhi Transport Corporation and another) reported in 2009 ACJ 1298. Further, the learned counsel for the appellant would contend that the tribunal did not grant any compensation towards loss of marital prospects and towards loss of future earning prospects. According to him, the appellant sustained grievous injuries which resulted in amputation of part of his left leg.

5. Considering the grievous injuries suffered by the appellant, the learned counsel would contend that the tribunal ought to have awarded compensation towards attender benefits and should have adequately compensated him towards pain and sufferings and transportation costs.

6. Further, he would contend that the disability of the appellant was assessed by the Doctor at 60% and the disability certificate was also filed by the appellant before the tribunal which was marked as Ex.P.11. But according to him, the tribunal has without any basis assessed the disability of the appellant at 50%.

7. Per contra, learned counsel for the 2nd respondent Insurance Company would submit that the compensation awarded by the tribunal to the appellant is a just compensation. He was only 17 years old and did not produce any document before the tribunal to prove that he was earning a monthly income of Rs.4,000/- at the time of the accident. Therefore, according to him, the tribunal has rightly rejected the claim of the appellant for loss of future earnings under the impugned award.

8. This Court, after having considered the materials available on record and after examining the impugned award, after hearing the submissions of the respective counsels, observes the following;

a. It is an undisputed fact that only due to the rash and negligent driving by the driver of the lorry insured with the 2nd respondent, the accident had happened which resulted in injuries sustained by the appellant.

b. the nature of injuries sustained by the appellant has also not been disputed by the 2nd respondent before the tribunal.

c. Even though the disability certificate was produced by

the appellant which is marked as Ex.P.11 which discloses 60% disability, the tribunal without any basis, has assessed the disability of the appellant at 50%.

d. The tribunal has erroneously applied 16 multiplier instead of 18 multiplier and has not followed (Sarla Verma and others Vs. Delhi Transport Corporation and another) reported in 2009 ACJ 1298 considering the fact that the appellant was 17 years of age at the time of the accident. Thus, by applying 17 multiplier, the disability compensation has to be calculated as follows;

$\text{Rs.}3000/- \times 12 \times 18 \times 50/100 = \text{Rs.}3,24,000/-$.

e. The compensation awarded by the tribunal towards transportation cost is also inadequate and not in accordance with the judgment of the Honourable Supreme Court in the case of National Insurance Company Limited versus Pranay Sethi and others reported in 2017(2) TN MAC 609(SC) . Therefore a sum of Rs.5000/- towards transportation cost is awarded as compensation.

f. It is seen that a part of the left leg of the injured has been amputated and taking into account the said fact, this Court awards Rs.15,000/- towards attender charges.

9. Considering the age of the appellant at the time of the accident, the tribunal ought to have awarded compensation towards loss of marital prospects. The appellant has sustained grievous injuries which resulted in amputation of a portion of his right leg. Considering the same, this court is of the considered view that a sum of Rs.50,000/- will have to be granted to the appellant towards loss of marital prospects.

10. The tribunal has also not granted any compensation towards extra nourishment charges under the impugned award. This Court is of the considered view that a sum of Rs.10,000/- has to be granted to the appellant towards extra nourishment charges.

11. The tribunal, based on the medical bills has granted Rs.91,258/- towards medical expenses and this Court, hereby confirms the same.

12. In the light of the above observations, this Court is of the considered view that the compensation awarded by the tribunal under the impugned award has to be enhanced to Rs.5,24,248/- instead of Rs.4,13,258/- in the following manner.

Sl. No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Loss of income due to disability	Rs. 2,88,000/-	Rs. 3,24,000/-

2	Loss of Income during the period of treatment	Rs. 9,000/-	Rs. 9,000/-
3	Transportation	Rs. 3,000/-	Rs. 5,000/-
4	Medical Expenses	Rs. 91,258/-	Rs. 91,258/-
5	Pain and sufferings	Rs. 20,000/-	Rs. 20,000/-
6	Marital prospects		Rs. 50,000/-
	Extra Nourishment	Rs. 2,000/-	Rs. 10,000/-
	Attender charges		Rs. 15,000/-
	Total	Rs. 4,13,258/-	Rs. 5,24,258/-

13. In the result,

(i) the appeal is partly allowed. No costs.

(ii) the compensation awarded by the tribunal is enhanced by this Court from Rs.4,13,258/- to Rs.5,24,248/- along with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) the 2nd respondent is directed to deposit the entire amount awarded by this Court as compensation, less the amount, if any, already deposited to the credit of MCOP along with interest at the rate of 7.5% per annum from the date of claim till the date of realisation within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant is directed to withdraw the same by filing an appropriate application.

Sd/-

Assistant Registrar(CS VI)

सत्यमेव जयते

//True Copy//

Sub Assistant Registrar

msr

To

1. The Sub Judge,
Motor accident Claims Tribunal, Tiruchengode.

Copy to:

The Record Clerk, VR Section,
High Court, Madras.(2 copies)

+1cc to Mr.M.Guruprasad, Advocate sr.no.66248
+1cc to Mrs.N.B.Surekha, Advocate sr.no.65395

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