

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2018
PRONOUNCED ON: 14.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 2553 of 2014

&

C.M.P. No. 1765 of 2018

P. Sekar ..Appellant/Petitioner

Vs.

1. G. Sathiyaseelan

2. Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Road,
T. Nagar, Chennai - 600 017. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.04.2014 passed in MACT.O.P. No. 4568 of 2012 by the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

For Appellant :: Mr.R. Kalaiarasan for
Mr.N.M. Muthurajan

For Respondents:: Mr.S. Dhakshinamoorthy for R2

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH,J.)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai, by award dated 30.04.2014 in M.C.O.P. No. 4568 of 2012, the present appeal has been preferred by the injured/claimant.

2. Since the appeal has been filed questioning only the quantum of compensation awarded, it is not necessary for this Court to traverse into other aspects of the award.

3. The case of the claimant before the Tribunal was that on 28.08.2012, when he was travelling in a motor cycle bearing Registration No. TN-22-BL-2220, as a pillion rider, a lorry

bearing Registration No. TN-46-F-6676, belonging to the 1st respondent and insured with the 2nd respondent, driven in a rash and negligent manner, dashed against the motor cycle from behind, resulting in an accident, on account of which, the claimant sustained multiple grievous injuries, apart from crush injury on his left knee and amputation of left hand above elbow, leading to the filing of claim petition seeking compensation to the tune of Rs.40 lakhs. The Tribunal, on appreciation of oral and documentary evidence, while holding that the driver of the lorry was responsible for the accident, awarded a sum of Rs. 16,97,000/- as compensation. Challenging the same, as already stated, the claimant has come forward with the present appeal.

4. The first and foremost submission of the learned counsel for the appellant/claimant is that though the claimant, who was employed as a two-wheeler mechanic in M/s. Sri Devi Auto Works, was stated to be earning a sum of Rs.750/- per day, apart from Rs.200/- as extra tips and to prove his avocation and income, the owner of M/s.Sri Devi Auto Works was examined as P.W.2, who had also affirmed this fact, the Tribunal erred in fixing only a sum of Rs.10,000/- as monthly income of the claimant. In addition to this, according to the learned counsel for the appellant/claimant, when the disability suffered by the claimant, whose left hand was amputated upto shoulder, was assessed as 90% by the Doctor, examined as P.W.4, the Tribunal ought not to have fixed the same at 80%. Further, according to the learned counsel for the appellant, considering the age and percentage of disability sustained, the Tribunal did not consider awarding any amount towards "Future Prospects". Hence, the learned counsel seeks enhancement of the award passed by the Tribunal by refixation of monthly income and the percentage of disability.

5. On the other hand, learned counsel for the 2nd respondent Insurance Company opposed the enhancement of the award stating that in the absence of any documentary proof to substantiate the income earned by the claimant, even the sum of Rs.10,000/- fixed by the Tribunal is on the higher side and therefore, there is no need for further enhancement towards "Loss of Earning Capacity". That apart, it is submitted by the learned counsel for the Insurance Company that the Tribunal has awarded a sum of Rs. 1,50,000/- towards "Pain and Suffering" and another sum of Rs.1,00,000/- towards "Mental Agony", which is not sustainable and therefore, the amount awarded towards "Mental Agony" has to be set aside.

6. Keeping the submissions of the learned counsel on either side, we have carefully gone through the entire materials on record.

7. Though the injured/claimant was stated to be earning Rs.750/- per day and to prove the avocation and income of the claimant, P.W.2, the owner of M/s. Sri Devi Auto Works, where the claimant was employed as a two-wheeler mechanic, was examined and he had also deposed that the claimant was earning a sum of Rs.750/- per day, in the absence of any documentary proof, the Tribunal had determined a consolidated sum of Rs.10,000/- as the monthly income of the claimant and we find no reason to modify the same, considering the nature of work carried on by the injured claimant.

8. With regard to the disability suffered by the claimant, the Doctor, by name, Mathiazhagan, who was examined as P.W.4, has stated that the total and permanent disability sustained by the claimant is 90%. However, the Tribunal, taking note of the fact that the claimant's left hand was amputated and amputation of arm is a schedule injury, which comes under Amputation Item 2 of Workmen's Compensation Act, fixed the percentage of disability at 80% in accordance with the Workmen's Compensation Act and we find no reason to interfere with the same. However, taking note of the disability sustained by the claimant, which had impaired him from carrying on his avocation as before and also his age, we are inclined to award "Future Prospects" to the claimant.

9. At this juncture, it is relevant to state that the claimant has filed C.M.P. No. 1765 of 2018 seeking permission to file additional documents, namely, xerox copies of Pan Card, Aadhar Card and Voter ID, to prove that he was aged about 42 years at the time of accident, whereas the Tribunal had erroneously taken his age as 53 years. The learned counsel for the 2nd respondent has expressed "No Objection" for receipt of additional documents and hence, C.M.P. No. 1765 of 2018 is ordered.

10. Now, with regard to "Future Prospects", considering the age of the claimant, we are inclined to add 25% towards "Future Prospects" and fix his total monthly income as hereunder:

Monthly Income fixed:: Rs.10,000/-
ADD: 25% towards
"Future Prospects" :: Rs.10,000/- (+) 25%(Rs.10,000/-)
:: Rs.12,500/-

11. As far as multiplier is concerned, the Tribunal had taken multiplier 11 for computing "Loss of Earning Capacity due

to disability" whereas the appropriate multiplier to be adopted is 14, based on the age of the claimant, which has been now proved to be 42 years. Therefore, taking the total monthly income of the injured claimant as Rs.12,500/-, percentage of disability as 80% and adopting multiplier 14, "Loss of Earning Capacity due to disability" is arrived at as hereunder:

Loss of Earning Capacity :: Rs.12,500 x 12 x 14 x 80/100
:: Rs.16,80,000/-

12. As far as the amount awarded towards "Pain and Suffering" and "Mental Agony" are concerned, considering the fact that the claimant has lost his left hand upto shoulder and that he would have undergone unendurable pain and suffering on account of the injuries sustained and furthermore, being a two-wheeler mechanic by avocation, having been deprived of carrying on his avocation for the rest of his life, would be a source of mental agony to him, we do not find any infirmity in the Tribunal awarding amounts under both the heads. However, the sum of Rs.1,00,000/- awarded towards "Mental Agony" is reduced to Rs.50,000/-. Except these modifications, the amounts awarded by the Tribunal under the other heads are confirmed and the enhanced award passed by this Court, is enumerated hereunder:

Loss of Income for 9 months	::	Rs. 90,000/-
Transport to Hospital	::	Rs. 15,000/-
Extra Nourishment	::	Rs. 25,000/-
Damage to Clothing	::	Rs. 1,000/-
Medical Expenses	::	Rs. 25,000/-
Attender Charges	::	Rs. 25,000/-
Loss of amenities of life	::	Rs. 50,000/-
Pain and Sufferings	::	Rs.1,50,000/-
Mental Agony	::	Rs. 50,000/-
Permanent Disability	::	Rs.1,60,000/-
		(@ Rs.2000/- per percentage of disability)
Loss of Earning Capacity	::	Rs.16,80,000/-
Total	::	Rs.22,71,000/-

The rate of interest awarded by the Tribunal @ 7.5% per annum is retained.

13. In fine, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.16,97,000/- to Rs.22,71,000/- together with interest @ 7.5% per annum. No costs.

14. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is permitted to withdraw the same.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nv

To

1. The III Court of Small Causes, Chennai.
(Motor Accidents Claims Tribunal)

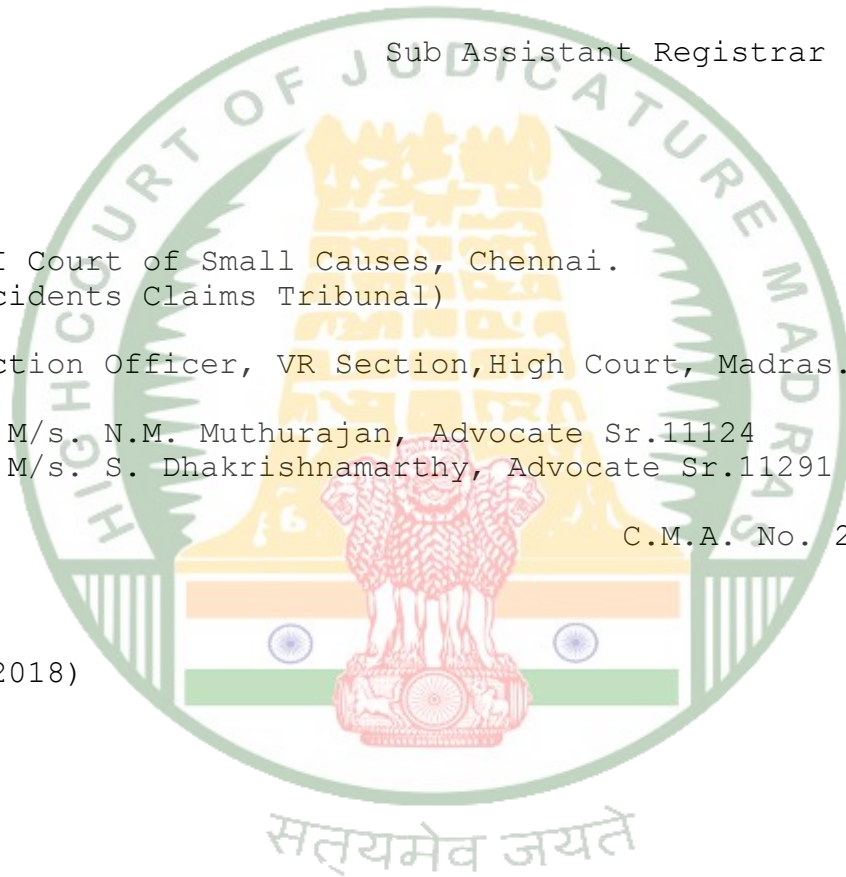
2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to M/s. N.M. Muthurajan, Advocate Sr.11124

+ 1 cc to M/s. S. Dhakrishnamarthy, Advocate Sr.11291

C.M.A. No. 2553 of 2014

SJ(CO)
EU(28/03/2018)



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