In the High Court of Judicature at Madras
Dated : 04.10.2018
Coram
The Honourable Mr.Justice K.K. SASIDHARAN
AND
The Honourable Mr.Justice R. SUBRAMANIAN

C.M.A.No.1397 of 2018

Mohammed Babu .... Appellant

vs

1) MGM Travels,
No.212, Old No.256,
Wall Tax Road,
Chennai -1

2) HDFC EGRO General Insurance Co Ltd,
New No.528, Old No.559, 2nd floor,
Annasalai, Teynampet,
Chennai - 18 ... Respondents

Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MACTOP No.4658 of 2012 dated 29.10.2014 on the file of Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai.

For Appellants : Ms.R. Subathra for
Ms.M. Malar

R.1 : Ex-parte

R.2 : Mr.Michael Visvasam

JUDGMENT

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

The claimant, who was awarded a sum of Rs.9,29,000/- for the injuries sustained by him in the motor accident that occurred on 17.08.2012, has come up with the appeal, seeking enhancement of compensation.

2. According to the claimant, on 17.08.2012, while the petitioner was riding his motorcycle bearing Registration No.TN-02-AR-0189 at Tharamani 100 feet road from east to west direction, a private bus, bearing Registration No.TN-01-AH-6510, belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, dashed against the motorcycle. As a result of the accident, he sustained grievous injuries and his right hand was

amputated below elbow. Contending that the injuries have resulted in disability, the claimant sought for compensation of Rs.40,00,000/-

3. The claim petition was resisted by the second respondent Insurance Company contending that the accident did not occur due to rash and negligent driving of the bus driver and according to the insurance company, it was the rash and negligent driving of the claimant himself that caused the accident and hence, the Insurance Company is not liable to pay the compensation. The insurance company also disputed the extent of disability and the pecuniary loss claimed.

4. In order to prove their claim, the claimant examined himself as P.W.1 and Dr.J.R.R. Thiagarajan was examined as P.W.2 and Exs.P.1 to 12 were marked. On the side of the respondent, no oral or documentary evidence was let in.

5. The Tribunal, after considering the oral and documentary evidence adduced before it, came to the conclusion that the accident was caused due to rash and negligent driving of the driver of the first respondent's bus, insured with the second respondent Insurance Company and accordingly, the Tribunal fixed the entire liability on the second respondent Insurance Company. This appeal is filed by the claimant, seeking enhancement of compensation awarded by the Tribunal.

6. The Tribunal took the monthly notional income of the claimant as Rs.5,000/- and having assessed disability at 60%, and also considering the age of the deceased i.e., 19 years at the time of accident, applied multiplier □18□. The Tribunal awarded a sum of Rs.6,48,000/- (Rs.5,000 x 12 18 x 60) towards loss of earning power.

7. Further, the Tribunal awarded various amount towards conventional heads. The break up of the details of the compensation awarded by the Tribunal are as follows:

1. Loss of income for 9 months : Rs. 45,000
2. Transportation : Rs. 10,000
3. Extra nourishment : Rs. 10,000
4. Damage to clothes : Rs. 1,000
5. Medical expenses : Rs. 25,000
6. Attender charges : Rs. 15,000
7. Loss of amenities : Rs. 50,000
8. Mental agony to the petitioner &
pain and suffering : Rs. 50,000

9. Loss of marital life : Rs. 75,000
10.Loss of earning power
Rs.5,000 x 12 x 18 x 60 : Rs.6,48,000

Total compensation : Rs.9,29,000

Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the appeal.

8. Ms.R. Subathra, learned counsel for the appellant/claimant would contend that the Tribunal is not

right in fixing the monthly notional income as Rs.5,000/-. She would also point out that the appellant/claimant was pursuing his B.Com degree course at the time of accident and was also as a part time employee in KFC. She also pointed out that the claimant's employment and his education have been proved by documentary evidence, viz., Ex.P.6 pay slip and Ex.P.11 copy of the college identity card.

9. Per contra, Mr.Michael Visvasam, learned counsel for the Insurance Company would contend that the Tribunal had taken note of Ex.P.6 pay slip and fixed monthly notional income of Rs.5,000/-. Therefore, according to him, there is no scope for enhancement of the award of the Tribunal. Since the first respondent, owner of the bus remained exparte before the Tribunal, notice to the first respondent is dispensed with. We have considered the rival submissions made on either side and perused the materials available on record.

10. From the evidence, it is seen that the appellant/claimant apart from working as part time employee in KFC, was pursuing his under graduation in Commerce. He was doing third year at the time of accident. Hence on completion of the degree course, he will have better prospects. Therefore, fixing of the monthly income at Rs.5,000/-, in our opinion, is too low. Considering the fact that the accident had occurred in the year 2012, we fix the monthly income notionally as Rs.10,000/- and by adding 40% towards future prospects, the monthly income works out to Rs.14,000/-. Thus, the loss of earning capacity would be Rs.14,000 x 12 x 18 x 60 = Rs.18,14,400/-.

11. Further, the Tribunal has granted a sum of Rs.45,000/- towards loss of income for 9 months. The said award cannot be sustained in view of the fact that the Tribunal adopted multiplier method to assess the loss of future earning capacity. Therefore, the award granted by the Tribunal for a sum of Rs.45,000/- towards loss of income for 9 months has to be set aside and accordingly, it is set aside. The Tribunal has awarded the following amounts as compensation under various heads:

Transportation : Rs. 10,000
Extra nourishment : Rs. 10,000
Damage to clothes : Rs. 1,000
Medical expenses : Rs. 25,000
Attender charges : Rs. 15,000
Loss of amenities : Rs. 50,000
Mental agony to the petitioner &
pain and suffering : Rs. 50,000
Loss of marital life : Rs. 75,000

The same are sustained.

Thus the total amount awarded is Rs.20,50,400. The details of the modified compensation as per the above discussion are as under:-

Loss of earning capacity : Rs.18,14,400
Transportation : Rs. 10,000
Extra nourishment : Rs. 10,000
Damage to clothes : Rs. 1,000
Medical expenses : Rs. 25,000
Attender charges : Rs. 15,000

Loss of amenities : Rs. 50,000
Mental agony to the petitioner &
pain and suffering : Rs. 50,000

Loss of marital life : Rs. 75,000
Total --- -------------
Rs.20,50,400

The same is rounded off to Rs.20,50,000/-.

13. In fine, the Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is modified to Rs.20,50,400/- (Rupees twenty lakhs fifty thousand four hundred only) with interest at 7.5% from the date of petition till the date of deposit. The Insurance Company is directed to deposit the modified amount awarded by this

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sr

Court within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the amount. There will be no order as to costs in this appeal.

(K.K.S.J.,) (R.S.M.J.,)
04 October 2018
sr

Speaking Order/Non-Speaking Order
Index:Yes/No
Website:yes/no

To

Motor Accidents Claims Tribunal,
(II Court of Small Causes), Chennai.

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