

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1706 of 2010

M.Neelakandan

... Appellant

Vs

1.Dr.K.G.Ramamoorthy

(R 1 was set ex-parte in the trial Court)

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 the Motor Vehicles Act, 1988, judgment and decree dated 18.09.2009 made in MACT O.P.No.338 of 2005 on the file of the V Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr.R.Arundattan
for M/s.C & K Law Firm

For Respondents :R1 - set ex parte
M/s.J.Michael Visuvasam for R2

J U D G M E N T

The instant appeal has been filed challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (V Judge, Small Causes Court) Chennai in its judgment and decree passed in MACT.O.P.No. 338 of 2005 dated 18.09.2009.

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

(i)The Appellant sustained injuries on account of an accident which happened on 26.12.2004 at 9.30 hours caused by a vehicle namely Hero Honda Motor Cycle bearing Registration No. TN57 D 4970 insured with the second respondent. The Appellant preferred a claim before the Motor Accident Claims Tribunal,

Chennai in M.C.O.P.No. 338 of 2005, against the second respondent.

(ii) The Motor Accident Claims Tribunal by its Award dated 18.09.2009 in M.C.O.P.No. 338 of 2005, directed the second respondent to pay the Appellant a sum of Rs.69,500/- together with interest at 9.5% per annum from the date of claim till the date of realization and also awarded costs.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the Appellant seeking enhancement of compensation.

4. Heard Mr.R.Arundattan, learned Counsel for the Appellant and Mr.J.Michael Visuvasam, learned Counsel for the second respondent.

5. According to the learned counsel for the Appellant, the Tribunal has not considered the fact that the Appellant was earning a monthly salary of Rs.6,500/- and the Tribunal also did not take note of the fact that the Appellant due to the injuries sustained by him, had to take medical treatment continuously for a long period resulting in loss of earning capacity.

6. The learned Counsel for the Appellant drew the attention of this Court to Ex.P-5 and submitted that even after the Appellant was discharged from the hospital, the Appellant was taking treatment from 12.04.2015 upto 25.05.2005 as seen from Ex-P-5 issued by a Civil Surgeon, Government General Hospital, Chennai-3. As seen from Ex.P-5, the Appellant was admitted to the hospital on 26.12.2004 and discharged from the hospital on 17.01.2005. Thereafter, according to the learned counsel for the Appellant, the Appellant due to injuries sustained on account of the accident had to regularly take treatment as an out patient during the year 2005.

7. The learned Counsel for the Appellant then drew the attention of this Court to the impugned Award and submitted that only for a period of four months from the date of accident, compensation was awarded towards loss of income whereas according to him, the Appellant was unfit for employment upto the end of October, 2005 as seen from Ex-P-5. Therefore, according to the learned Counsel for the Appellant, the compensation awarded by the Tribunal is a meagre and an inadequate sum and is not a just compensation.

8. Per contra, the learned Counsel for the second respondent /Insurance Company would submit that the compensation awarded by the Tribunal in favour of the Appellant is a just compensation. According to him, the Appellant was under

hospitalization only from 26.12.2004 to 17.01.2005 and thereafter, he was fully fit. The learned Counsel for the second respondent further submitted that the medicines prescribed under Ex.P5 were only preventive medicines. According to him, Ex.P5 will not establish that the Appellant was medically unfit for re-employment after discharged from the hospital.

9.Further, the learned Counsel for the second respondent would submit that under the Award, there is a calculation mistake and because of the calculation mistake, the second respondent was compelled to pay an additional sum of Rs.2,000/-. According to him, as per the Award the second respondent will have to pay only Rs.67,500/- whereas under the decree the second respondent was directed to pay Rs.69,500/- which is an incorrect figure.

10.This Court after considering the materials available on record and after perusing and examining the impugned award and after hearing the submissions of the respective Counsels observes the following:

a)The award passed by the Tribunal is a well considered and a reasoned Award. All the documents filed by the Appellant have been duly considered by the Tribunal. The out patient record issued by the Government General Hospital, Chennai namely Ex.P5 relied upon by the learned Counsel for the Appellant has also been duly considered by the Tribunal.

b)The only factor which has not been taken note of by the Tribunal is that the Appellant as seen from the out patient record issued by the Government General Hospital, Chennai namely Ex-P-5 has been regularly taking treatment more than twice a month from 29.03.2005 upto 25.10.2005 and the Doctor has also prescribed medicines to the Appellant during that period. It is the case of the Appellant that for the entire period between 29.03.2005 to 25.10.2005, he was unfit for doing regular work. The Tribunal has not awarded any compensation towards loss of earning to the Appellant for the period from 01.04.2005 till 25.06.2005.

11.This Court, is of the considered view that the Tribunal ought to have granted compensation towards loss of earning to the Appellant from 01.04.2005 till 25.06.2005. Excepting for not granting compensation towards loss of earning for the above referred period, this Court does not find any infirmity in respect of the compensation awarded to the Appellant under other heads in the impugned Award. The loss of earning for the two months period (rounded off) is Rs.8,000/- (Rs.4,000x2).

12.In the result, the appeal is partly allowed and the Award dated 18.09.2009, passed by the Tribunal in M.C.O.P.No. 338 of 2005 is hereby modified directing the second respondent to pay the Appellant a sum of Rs.77,500/- (Rs.69,500+Rs.8,000/-) instead of Rs.69,500/-. The second respondent is directed to deposit the difference amount of Rs.8,000/- within a period of four weeks from the date of receipt of a copy of this order, together with interest at 9.5% per annum from the date of claim till the date of deposit to the credit of M.C.O.P.No.338 of 2005 on the file of the Motor Accident Claims Tribunal (V Judge, Small Causes Court) Chennai. On such deposit being made, the Appellant is permitted to withdraw the said sum by filing an appropriate application. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
(Small Causes Court), Chennai.

Copy to

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.R.Arundattan, Advocate, S.R.No.57809

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.57621

सत्यमेव जयते

C.M.A.No.1706 of 2010

SSI (CO)
GSP(27/09/2018)

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