

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1954 of 2008

M. Lakshmanan

....Appellant

Vs

1. Stella John
2. The United India Insurance
Company Limited,
Motor III Party Claims Office,
No.15, Anna Salai,
Chennai-2.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.09.2004 made in MCOP.NO.177 of 2003 on the file of the Motor Accident Claims Tribunal, (Addl. District Judge, Fast Track Court-III), Poonamallee..

For Appellant : Mr. J. Mahalingam

For Respondents 2 : Mr.M.B.Raghavan
R1-set exparte in tribunal

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 30.09.2004 made in MCOP.NO.177 of 2003 on the file of the Motor Accident Claims Tribunal, (Addl. District Judge, Fast Track Court-III), Poonamallee..

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 van bearing Registration No.TN-57-Z-4156 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.177 of 2003 seeking a compensation of Rs.6 lakhs.

(ii) The Motor Accident Claims Tribunal, by its Award dated 30.09.2004 passed in MCOP.No.177 of 2003 directed the 2nd respondent to pay the appellant, a sum of Rs.1,92,200/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation and also awarded costs.

(iii) Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Mr.J. Mahalingam, learned counsel for the appellant and Mr. B. Raghavan, learned counsel for 2nd respondent Insurance Company.

4. According to the learned counsel for the appellant, the appellant was a scrap material wholesale dealer at the time of accident and was earning a monthly income of Rs.7000/-, but the tribunal has assessed the notional monthly income of the appellant only at Rs.2000/-. Learned counsel for the appellant further contended that the appellant was hospitalised from 16.9.2000 to 2.10.2000 and sustained fracture in the left shaft of femur, fracture of 2nd, 3rd, 4th, 5th and 6th ribs with Flial chest dislocation of left clavicle and multiple injuries in the body. According to him, due to the injuries, the appellant has lost his future earning capacity.

5. Per contra, learned counsel for the 2nd respondent submits that the accident happened in the year 2000 and since no documentary evidence was produced by the appellant before the tribunal to prove that he was earning a monthly income of Rs.7000/- as a scrap material whole sale dealer, the tribunal has rightly assessed the notional income of the appellant at Rs.2,000/-. According to him, the compensation awarded by the tribunal is a just compensation.

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

a. The nature of injuries sustained by the appellant as a result of of the accident caused by the vehicle injured with the 2nd respondent has not been disputed by the 2nd respondent before the tribunal.

b. The appellant was hospitalised from 16.9.2000 to 2.10.2000 at MIOT hospitals. This fact has also not been disputed by the 2nd respondent before the tribunal. The appellant has also produced the discharge summary from the hospital which was marked as Ex.P.2 before the tribunal.

c. The appellant has not produced any document to prove that he was earning monthly income of Rs.7000/- at the time of the accident and he has also not filed any document to prove that he was a scrap material wholesale dealer.

e. The accident happened in the year 2000. Considering the year of the accident, this Court is of the considered view that the tribunal ought to have assessed the notional monthly income of the appellant as Rs.3000/- instead of Rs.2000/-.

7. The compensation awarded by the tribunal towards transportation and extra nourishment charges is also low considering the nature of injuries sustained by the appellant. The tribunal has also not awarded any compensation to the appellant towards damages to clothing and articles, attender charges and towards loss of amenities. With regard to the disability compensation, the tribunal has rightly assessed the disability compensation at Rs.60,000/-, calculated at the rate of Rs.1000/- per percentage of disability.

8. The tribunal has also rightly assessed the loss of earnings of the appellant at Rs.25,000/- In the result, award passed by the tribunal by its award dated 30.09.2004 in MCOP.No.1773 of 2003 is enhanced by this Court to Rs.2,29,498/- in the following manner.

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Loss of Income (3000 x 4 months)	Rs. 24,000/-	Rs.24,000/-
Transportation	Rs. 3,000/-	Rs.10,000/-
Extra Nourishment		Rs. 10,000/-
Damage to clothes	--	Rs. 1,000/-
Reimbursement of medical expenses	Rs.44,498-	Rs.44,498-
Attendar charges	----	Rs.10,000/-
Amenities	-----	Rs.10,000 /-
Pain and Sufferings	Rs.60,000/-	Rs.60,000/-
Disability	Rs.60,000/-	Rs.60,000/-
Total	Rs.1,92,200/- (rounded off)	Rs.2,29,498/-

9. In the result,

i) the Appeal is partly allowed by enhancing the

compensation awarded by the tribunal from Rs.1,92,200/- to Rs.2,29,498/-. No costs.

ii) the enhanced amount shall carry interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The amount awarded by the tribunal shall carry interest at the rate of 9% as awarded by the tribunal.

iii) the 2nd respondent Insurance company is directed to deposit the enhanced compensation awarded by this Court along with interest as stated above to the credit of MCOP within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the appellant is permitted to withdraw the same on filing an appropriate application.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Addl. District Judge,
Motor Accident Claims Tribunal,
Fast Track Court -III, Poonamallee
2. The Record Clerk, VR Section,
High Court, Madras.

+1cc to Mr. M.B.Gopalan, Advocate, S.R.No.63200
+1cc to Mr. J.Mahalingam, Advocate, S.R.No.63420

C.M.A.NO.1954 of 2008

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