

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1971 of 2008

Amalraj

...Appellant/ petitioner

Vs

1. Tmt.Loganayagi

2. The Manager,
National Insurance Company Ltd.,
No.7,
Thiru-V-Ka Industrial Estate,
Guindy,
Chennai - 600 032. ...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Hon'ble Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.III, Poonamallee in MACTOP.No.586 of 2005 dated 19.09.2007.

For Appellant : Mr.K.Varadha Kamaraj
for MR.V.Srinivasan

For Respondents : Mr.S.Vadivel for R2

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 19.09.2007 passed by the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.III, Poonamallee in MACTOP.No.586 of 2005.

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 Water Tanker Mini Lorry bearing Registration No.TN-05-M-4824 insured with the second respondent and owned by the first respondent. As a result of the accident, the Appellant sustained fracture in the left leg, foot and right leg and also sustained multiple injuries all over the body.

(ii) The Appellant preferred a claim before the Motor Accidents Claims Tribunal in MACTOP.No.586 of 2005 seeking compensation of Rs.6,00,000/-, which was restricted to 4,50,000/- against the respondents. The Motor Accidents Claims Tribunal, by its Award dated 19.09.2007 passed in MACTOP.No.586 of 2005 directed the second respondent to pay the Appellant a sum of Rs.72,351/- together with interest at the rate of 7.5%, per annum from the date of petition till the date of realisation.

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

3. Heard, Mr.K.Varadha Kamaraj, learned counsel appearing for Mr.V.Srinivasan on behalf of the Appellant and Mr.S.Vadivel, learned Counsel for the second respondent.

4. According to the learned Counsel for the Appellant, the Tribunal ought to have awarded a higher compensation considering the nature of the Appellant's employment and the injuries sustained by him. The learned Counsel for the Appellant would submit that the Appellant was a collection clerk and he was earning Rs.4000/- per month and he sustained disability of 40% and he was only 36 years at the time of accident.

5. Considering all these factors, the learned Counsel for the Appellant submits that the Tribunal ought to have applied the multiplier method while assessing the compensation and should have awarded a higher sum towards loss of income, during the period of his treatment and towards pain and suffering, transportation and extra nourishment and towards loss of amenities.

6. According to the learned Counsel for the Appellant, the Tribunal has erroneously fix the disability compensation on percentage basis and not by applying multiplier method.

7. Per contra, the learned Counsel for the second respondent insurance company would submit that the compensation awarded by the Tribunal is a just compensation. He would further submit that even though as per the disability certificate produced by the Appellant before the Tribunal, his disability was assessed only at 40 %, but the Tribunal has awarded compensation based on 45% disability. Therefore, according to him, the Appellant has been adequately compensated.

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

observes the following:

a) It is an undisputed fact that the Appellant was a Collection Clerk at the time of the accident. Even though the Appellant had claimed that he was earning Rs.4000/- per month, the Tribunal has assessed his monthly income at Rs.3000/-.

b) No Contra evidence was produced by the second respondent before the Tribunal to disprove the claim of the Appellant that he was earning a monthly income of Rs.4000/- at the time of the accident.

c) The Appellant has sustained fracture in both the legs and also sustained multiple injuries all over the body. He was also admitted as an inpatient at Government Stanley Hospital, Chennai and has taken further treatment at SRM Hospital, West Mambalam, Chennai. In his claim statement, the Appellant has stated that as a result of the injuries sustained by him due to the accident, he gets giddiness quite frequently, and he is unable to walk properly. The Appellant has also produced medical bills as well as discharge summary which were marked as Ex.P3 and P5 respectively before the Tribunal and these statements have not been disproved by the second respondent by producing any contra evidence.

9. Considering the nature of injuries sustained by the Appellant, the Tribunal ought to have applied the multiplier method in assessing the compensation as due to the injuries sustained by him as a result of the accident he would certainly have suffered loss of earning capacity but the Tribunal has erroneously awarded compensation for disability on percentage basis.

10. Under the impugned Award, the Tribunal has calculated the loss of income for the period during which the Appellant could not attend his regular work only for five months even though the tribunal has given a finding that for six months, the appellant was unable to do his regular work. Therefore the Tribunal has erroneously awarded compensation towards loss of income only for 5 months even though the Appellant is entitled to receive compensation towards loss of income for 6 months.

11. The Tribunal has also awarded a reduced compensation towards pain and sufferings, Transportation, Extra nourishment. Further no compensation awarded towards loss of amenities. Considering the nature of injuries sustained by the Appellant and the nature of his employment, the Tribunal ought to have awarded a higher compensation and should have also awarded compensation for loss of amenities.

12. Considering the age of the Appellant at the time of the accident the multiplier to be applied is 15 and loss of

earning power at 20 percent, the compensation towards loss of income would work out as follows;

$$\text{Rs.}3000 \times 12 \times 15 \times 20/100 = \text{Rs.}1,08,000/-$$

13. In view of the above observations, this Court is of the considered view that the Award passed by the Tribunal has to be enhanced in the following manner.

Heads	Amount awarded by Tribunal	Amount awarded by this Court
Disability 3000x12x15x20/100	Rs.45,000/-	Rs.1,08,000/-
Loss of income 3000 x 6	Rs.15,000/-	Rs. 18,000/-
Medical bills	Rs.5351/-	Rs. 5,351/-
Pain and Sufferings	Rs.5,000/-	Rs. 25,000/-
Transportation and Extra Nourishment	Rs. 2,000/-	Rs. 10,000/-
Loss of amenities		Rs. 25,000/-
Total	Rs.72,351/-	Rs.1,91,351/-

14. Accordingly the Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded from Rs.72,351/- to Rs.1,91,351/-. No costs.

15. The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 2nd respondent shall deposit the enhanced compensation amount along with accrued interest in to the credit of MCOP.No.586 of 2005 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(Co)

//True Copy//

Sub Assistant Registrar

arb/msr

To

1. The Motor Accidents Claims Tribunal,
Additional District Court,
Fast Track Court No.III,
Poonamallee.

2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.K.SRINIVASAN , Advocate SR.No. 60371

+1cc to Mr.S.VADIVEL , Advocate SR.No. 60388

C.M.A.No.1971 of 2008

ASK(11/10/2018)



WEB COPY