

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2425 of 2009

Kannan

.. Appellant/Claimant

Vs

1. K.Selvam

2. The National Insurance Co., Ltd.,
rep. by its Branch Manager,
No.175-A, Grape Cotton Road,
Tuticorin & District.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the award passed by the learned Motor Accident Claims Tribunal, (Sub-Court), Nagapattinam made in M.C.O.P.No.140 of 2007 dated 06.08.2008 by awarding the compensation as prayed for in the O.P and too allow the appeal with cost throughout.

For Appellant : Mr.M.Thamizhavel
For Respondent 1: No appearance
For Respondent 2 : M/s.N.B.Sureka

J U D G M E N T

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, (Sub-Court), Nagapattinam in M.C.O.P.No.140 of 2007 dated 06.08.2008.

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

2. The Appellant sustained injuries as result of an accident that took place on 18.08.2004 caused by a Trucker Jeep bearing registration No.TAT 3064 insured of the 2nd respondent. The Appellant preferred a claim of Rs.2,40,500/- which was restricted to Rs.2,00,000/- before the Motor Accident Claim

Tribunal, Sub Court, Nagapattinam in M.C.O.P.No. 140 of 2007. The Motor Accident Claim Tribunal by its award dated 06.08.2008 in M.C.O.P.No.140 of 2007 directed the respondents jointly and severally to pay the Appellant a sum of Rs.51,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also awarded costs.

3. Aggrieved by the quantum of compensation fixed by the Tribunal, the Appellant / claimant has filed the instant appeal.

4. Heard Mr.M.Thamizhavel, learned counsel for the Appellant and M/s.N.B.Sureka, learned counsel for the second respondent.

5. According to the learned counsel for the Appellant, the Appellant has sought for enhancement of compensation on the grounds that even though the Appellant sustained 37% disability and loss his future prospects, the Tribunal did not apply multiplier while fixing the quantum of compensation under the impugned award. Further, the learned counsel for the Appellant would content that even though disability certificate, confirming that the Appellant suffered 37% disability, was produced before the Tribunal which was marked as Ex.P6, the Tribunal has without any basis assessed the disability of the Appellant only at 30%. The learned counsel for the Appellant would further submit that the Appellant sustained fracture of shaft of right femur as a result of the accident and due to the said injuries, the Appellant's future prospects was lost.

6. Per contra, the learned counsel for the second respondent would submit that the Tribunal has rightly assessed the quantum of compensation payable to the Appellant and therefore, there is no necessity to interfere with the impugned award.

7. This Court after considering 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 suffered 37% disability as seen from Ex.P6, no contra evidence was produced by the 2nd respondent before the Tribunal to disprove the percentage of disability sustained by the Appellant. The Tribunal, without any basis has assessed the percentage of disability at 30%, even though Ex.P6 clearly establishes that the Appellant has sustained 37% disability.

b) The Tribunal has not awarded any compensation to the Appellant under the heads transportation and loss of amenities, which he is entitled to as per the decisions of the Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi

Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC) and National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (6) SCC 680. This Court is of the considered view that a sum of Rs.10,000/- towards Transportation Charges and another sum of Rs.10,000/- towards Loss of amenities will be a just compensation.

c) The compensation awarded by the Tribunal, under the head disability was Rs.30,000/-. Considering the nature of injuries sustained by the Appellant, he would certainly have suffered loss of future prospects and this Court is of the considered view that a sum of Rs. 60,000/- calculated at the rate of Rs.2,000/- per percentage of disability will be a just and reasonable compensation under this head.

d) Insofar as the compensation towards extra nourishment charges, the Tribunal has awarded only a sum of Rs.1,000/- and this Court is of the considered view that a sum of Rs.5,000/- will be a just compensation under this head.

8. In the result, this Court is of the considered view that the award passed by the Tribunal has to be enhanced in favour of the Appellant in the following manner:-

Heads	Amount Awarded by the Tribunal	Modified Amount
Disability	Rs.30,000/-	Rs.60,000/-
Pain and Sufferings	Rs.20,000/-	Rs.20,000/-
Extra Nourishment Charges	Rs.1,000/-	Rs.5,000/-
Transportation Charges	Nil	Rs.10,000/-
Loss of amenities	Nil	Rs.10,000/-
Total	Rs.51,000/-	Rs.1,05,000/-

9. In view of the above observations recorded by this Court, the award passed by the tribunal is modified by enhancing the award amount to Rs.1,05,000/- instead of Rs.51,000/- and the second respondent/Insurance Company is directed to deposit the modified Award amount of Rs.1,05,000/- together with interest at the rate of 7.5% per annum, after deducting the amount that has already been deposited by them to the credit of M.C.O.P.No.140 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam, within a period of four

weeks from the date of receipt of a copy of the order. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of M.C.O.P.No.140 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam, along with accrued interest by filing an appropriate application.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed without costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mm/nl

To

1.The Motor Accident Claims Tribunal,
(Subordinate Judge),
Nagapattinam.

+1cc to Mr.N.B.Surekha, Advocate, S.R.No.58741

+1cc to Mr.M.Thamizhavel, Advocate, S.R.No.58780

C.M.A.No.2425 of 2009

KGK(CO)
GSP(25/10/2018)

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