

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2614 of 2010

S.Jothi Ayyappan

... Appellant/Claimant

Vs

1.M.Rajarathinam
(Given up)

2.M.Raju
(Given up)

3.Iffco Tokyo General Insurance Co. Ltd.,
Tulasi Chambers 3rd Floor,
No.195, T.V.Swamy Road, R.S.Puram,
Coimbatore. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.No.402 of 2008 on the file of the Motor Accident Claims Tribunal Cum Fast Track Court No.IV Bhavani, Erode District dated 20.11.2009 and for enhancement of compensation.

For Appellant : Ms.T.Gayathiri
for Mr.C.Kulanthaivel

For Respondents: R1 & R2 - Given up
Mr.N.Vijayaraghavan for R3

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 20.11.2009, passed by the Motor Accident Claims Tribunal Cum Fast Track Court No.IV Bhavani, Erode District in its judgement dated 20.11.2009 in MCOP No.402 of 2008.

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

(i)The Appellant sustained injuries on 24.08.2008 as a result of an accident caused by a Hero Honda Motor Cycle bearing Registration No.TN-34 F-5078 owned by the second respondent and insured with the third respondent.

(ii)The Appellant preferred a claim before the Motor Accident Claims Tribunal in MCOP No.402 of 2008, seeking a compensation of Rs.3,00,000/-.

(iii)The Motor Accident Claims Tribunal in its Award dated 20.11.2009, passed in MCOP No.402 of 2008, directed the third respondent to pay the Appellant a sum of Rs.1,23,463/- together with interest at 7.5% per annum from the date of claim till the date of realization.

3.Heard, Ms.T.Gayathri, learned Counsel for the Appellant and Mr.N.Vijayaraghavan, learned Counsel for the third respondent.

4.According to the learned Counsel for the Appellant, the compensation awarded to the Appellant under the impugned Award is low and not commensurate with the actual loss suffered by the Appellant as a result of the accident. According to her, the Appellant sustained multiple fractures which have not been fully cured and there was a mal union on the bones and steel plate and screws are still available on the right leg. Considering the injuries sustained by the Appellant, according to the learned Counsel for the Appellant, the Tribunal ought to have awarded adequate compensation to the Appellant.

5.Per contra, the learned Counsel for the third respondent would submit that the compensation awarded under the impugned Award is a just compensation, since the Appellant was only a student at the time of the accident and was 22 years age.

6.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)There is a clear finding given by the Tribunal that only due to the rash and negligent driving by the driver of the vehicle, which was insured with the third respondent, the accident had happened.

(b)It is an undisputed fact as seen from the disability certificate namely Ex.P-5 that the Appellant sustained multiple fractures and steel plate and screws were also inserted on the right leg of the Appellant and the disability was assessed at

49%. No contra evidence has been produced by the third respondent to disprove the percentage of disability suffered by the Appellant as a result of the accident.

(c) Even though, the Appellant in his claim petition has claimed that he was earning a monthly income of Rs.6,000/- at the time of the accident, the Tribunal has not given any finding on the monthly income of the Appellant in the impugned Award.

(e) The Appellant has filed 14 documents which were marked as Exs.P1 to P14 before the Tribunal. As seen from the exhibits, the Appellant was hospitalized as a result of the injuries sustained by him due to the accident.

(f) Considering the nature of the injuries sustained by the Appellant, the Tribunal has not awarded any compensation towards attendant charges, future medical expenses, loss of income during the treatment period and towards loss of amenities. In his testimony before the Tribunal, the Appellant has categorically stated that steel plate has been inserted on his right leg during the surgery which will have to be removed in future. No contra evidence has been produced by the third respondent Insurance Company to disprove the said statement of the Appellant.

(g) Therefore, in the considered view of this Court, the Tribunal ought to have awarded adequate compensation towards future medical expenses as well. Admittedly, the Appellant had to undergo treatment for a period of four months. No compensation has been awarded by the Tribunal towards loss of income for the said period. Therefore, in the considered view of this Court, adequate compensation will have to be awarded to the Appellant towards loss of income for a period of four months.

(h) It is an undisputed fact that the Appellant suffered 49% disability as a result of the injuries sustained by him due to the accident towards disability compensation but the Tribunal without any basis has assessed the disability compensation only at Rs.30,000/-. The accident having taken place in 2008, this Court is of the considered view that a sum of Rs.2,000/- per percentage of disability is a reasonable compensation and therefore, this Court fixes the disability compensation at Rs.98,000/-.

(i) Considering the nature of injuries sustained by the Appellant, some amount of compensation will have to be granted to the Appellant towards loss of amenities as well.

7.In the result, the Award passed by the Tribunal in MCOP No.402 of 2008 dated 20.11.2009, is enhanced in the following manner:

S.No.	Heads	Compensation awarded by the Tribunal	Modified amount
1	49% disability Rs.2000 x49	Rs.30,000/-	Rs.98,000/-
2	Pain and suffering	Rs.40,000/-	Rs.15,000/-
3	Medical Expenses	Rs.42,463/-	Rs.42,463/-
4	Nutrition	Rs.10,000/-	Rs.10,000/-
5	Attender Charges	Nil	Rs.10,000/-
6	Transport Expenses	Rs.1,000/-	Rs.10,000/-
7	Future Medical Expenses	Nil	Rs.10,000/-
8	Loss of income during treatment Rs.3,000x4	Nil	Rs.12,000/-
9	Loss of Amenities	Nil	Rs.10,000/-
	Total	Rs.1,23,463/-	Rs.2,17,463/-

8.In the result, the appeal is partly allowed and the Award dated 20.11.2009 passed in MCOP.No.402 of 2008 is enhanced to Rs.2,17,463/- instead of Rs.1,23,463/- together with interest at 7.5% per annum from the date of claim till the date of realization. The third respondent is directed to deposit Rs.2,17,463/- together with interest at 7.5% per annum from the date of claim till the date of realization after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.402 of 2008 on the file of the Motor Accident Claims Tribunal Cum Fast Track Court No.IV Bhavani, Erode District within a period of four weeks from the date of receipt of this order. On such deposit being made, the Appellant is permitted to withdraw the said sum by filing an appropriate application. No costs.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pam

To

The Motor Accident Claims Tribunal
Cum Fast Track Court No.IV Bhavani,
Erode District.

+1cc to Mr.C.Kulanthaivel, Advocate Sr.62764
+1cc to Mr.N.Vijayaraghavan, Advocate Sr.63197

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srg 11/10/2018



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