

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1918 of 2013

M.Ranjitham

...Appellant/Petitioner

Vs

1.Tmt.Amutha moorthy,

2.The United India Insurance Co. Ltd.,
City Branch,
Sameez Arcade, C.H. Flavour in Cherooty Road,
Calicut-32
Kerala State.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to allow this Civil Miscellaneous Appeal and to set aside the decree and judgment dated 15.07.2010 made in M.C.O.P.No.896/2007 on the file of Motor Accident Claims Tribunal cum Additional District Judge, Krishnagiri and enhance the award amount.

For Appellant : Mr.M.Selvam

For Respondents : R1-No Appearance

: Mr.T.Ravichandran for R2.

सत्यमेव जयते
ORDER

The instant appeal has been filed by the Claimant, before the Motor Accidents Claims Tribunal, challenging the Award dated 15.07.2010 passed by the Motor Accidents Claims Tribunal Additional District Judge, Krishnagiri in M.C.O.P.No.896/2007.

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

On 07.12.2005 at about 06.30 hrs, when the Appellant was walking along the road N.H.7, Dharmapuri, a HMV lorry bearing registration No.TAS 7297 owned by the first respondent and insured with the second respondent, dashed against the Appellant,

due to the rash and negligent driving by the driver of the lorry. As a result of the accident, the Appellant sustained grievous injuries. The Appellant made a claim of Rs.5,50,000/- before the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri. The Tribunal by its Judgment and Decree dated 15.07.2010 in MCOP.No.896 of 2007 directed the respondents jointly or severally to pay the Appellant a sum of Rs.61,530/- together with interest at the rate of 6 % per annum from the date of claim till the date of realisation.

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3. Aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant/Claimant has preferred the instant appeal seeking enhancement of compensation.

4. Heard, Mr.M.Selvam, learned Counsel for the Appellant and Mr.T.Ravichandran, learned Counsel for the second respondent.

5. The grounds raised for challenge in the instant appeal are as follows:

a) The Tribunal erred in awarding a sum of Rs.40,000/- under the head Disability by assuming 40% of disability without any basis, though the appellant suffered compound fracture in the right tibia and the Doctor assessed the disability at 45%.

b) The Tribunal awarded only a meagre and inadequate amount under the heads pain and suffering, medical expenses, Transport, Extra nourishment, Convalescence and Attender Charges.

6. Per contra learned Counsel for the second respondent/Insurance Company would submit that the compensation awarded under the impugned Award passed by the Tribunal is a just compensation and does not call for any interference.

7. This Court after considering the materials available on record and after examining the Award which is the subject matter of challenge and after hearing the submissions of the respective Counsels observes the following:

a) It is an undisputed fact that the Appellant suffered 45% 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 40%, even though Ex.P6 clearly establishes that the Appellant has sustained 45% disability.

b) The compensation awarded by the Tribunal, under the head disability was Rs.40,000/-. 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. 80,000/- calculated at the rate of Rs.2,000/- per percentage of disability will be a just and reasonable compensation under this head.

c) The Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering. Considering the nature of injuries sustained by the Appellant, this Court is of the considered view that a sum of Rs.25,000/- will be a just compensation under this head.

d) The Tribunal has not considered the medical bills produced by the Appellant which was marked as Ex.P6. Even though the medical bills for a sum of Rs.5,000/- were furnished, the Tribunal has awarded compensation for medical expenses incurred by the appellant only at Rs.4,530/-, without any basis. This Court is of the considered view that a sum of Rs.5,000/- will be a just compensation under this head.

e) Insofar as the compensation towards Transport expenses and extra nourishment charges is concerned, the Tribunal has awarded only a sum of Rs.5,000/- and this Court is of the considered view that a sum of Rs.5,000/- for Transport expenses and another sum of Rs.5,000/- for Extra Nourishment charges will be a just compensation.

f) Considering the nature of injuries sustained by the Appellant, this Court is of the considered view that a sum of Rs.5,000/- will be a just compensation under the head Attender Charges.

g) Insofar as the compensation towards Convalescence, the Tribunal has awarded only a sum of Rs.1,000/- and this Court is of the considered view that a sum of Rs.15,000/- will be a just compensation under this head.

8. Considering all the above, this Court is of the considered view that the impugned award will have to be modified in the following manner:

Head	Amount Awarded by the Tribunal	Modified Amount
Disability	Rs.40,000/-	Rs.80,000/-
Pain and Suffering	Rs.10,000/-	Rs.25,000/-
Medical Expenses	Rs.4,530/-	Rs.5,000/-
Transport Expenses	Rs.5,000/-	Rs.5,000/-
Nourishment		Rs.5,000/-
Attender Charges	Rs.1,000/-	Rs.5,000/-
Convalescence (Loss of Amenities)	Rs.1,000/-	Rs.15,000/-
Total	Rs.61,530/-	Rs.1,40,000/-

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.1,40,000/- instead of Rs.61,530/- and the second respondent/Insurance Company is directed to deposit the modified Award amount of Rs.1,40,000/- with interest at the rate of 6% per annum after deducting the amount that has already been deposited by them to the credit of M.C.O.P.No.896 of 2007 on the file of Motor Accident Claims Tribunal cum Additional District Judge, Krishnagiri. On such deposit being made, the appellant is permitted to withdraw the amount lying to the credit of M.C.O.P.No.896 of 2007 along with accrued interest by filing an appropriate application.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims
Tribunal cum Additional
District Judge, Krishnagiri

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.56518

+1cc to Mr.M.Selvam, Advocate, S.R.No.56806

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RK(CO)
GSP(09/10/2018)

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