

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2763 of 2010

P.Easwari,

...Appellant

Vs

1.S.R.Duraisamy

2.Iffco Tokyo General Insurance Co. Ltd,
3rd floor, Thulasi Chambers,
TV Swami Main Road (West),
R.S.Puram, Coimbatore.

3.Boopathi,

4. Iffco Tokyo General Insurance Co. Ltd,
3rd floor, Thulasi Chambers,
TV Swami Main Road (West),
R.S.Puram, Coimbatore.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Degree dated 20.07.2010 in M.C.O.P.No.176 of 2010 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : R1 & R2 - No appearance
R3 - Given up
Mr.N.Vijayaraghavan for R4

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum compensation awarded by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Erode in its Award dated 20.07.2010, passed in M.C.O.P.No.176 of 2010.

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

(i)The Appellant sustained injuries on 23.07.2008 as a result of an accident caused by a Two wheeler Yamaha Crux bearing Registration No.TN33 AX 0339, insured with the second respondent. The Appellant preferred a claim before the Motor Accident Claims Tribunal, Erode, seeking a compensation of RS. 7,00,000/- as a result of the injuries sustained by him on

account of the accident caused by the vehicle insured with the second respondent Insurance Company.

(ii) The Motor Accident Claims Tribunal by its Award dated 20.07.2010 in M.C.O.P.No.176 of 2010, directed the second respondent to pay the Appellant a sum of Rs.4,21,100/- together with interest at 7.5% per annum from the date of claim till date of realization.

3. Aggrieved by the Award dated 20.07.2010, passed in M.C.O.P.No.176 of 2010, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.R.Nalliyappan, learned Counsel for the Appellant and Mr.N.Vijayaragavan, learned Counsel for the Insurance Company.

5. The learned Counsel for the Appellant submitted that the Appellant lost his left eye and his head bone also got fractured as a result of the accident caused by the vehicle insured with the second respondent Insurance Company. The Appellant has produced the disability certificate, which confirms that he has suffered 60% disability. The Appellant was a power loom weaver at the time of the accident and in his claim petition he had disclosed that he was earning a monthly salary of Rs.5000/-. According to the learned Counsel for the Appellant, the Award passed by the Tribunal is very low and not commensurate with the actual loss suffered by the Appellant as a result of the injuries.

6. According to the learned Counsel for the Appellant, the Tribunal has erroneously assessed the monthly income of the Appellant at the time of accident at Rs.3000/- without any basis. The accident having happened on 23.07.2008, the Tribunal ought to have assessed the monthly income of the Appellant at a higher sum. According to the learned Counsel for the Appellant, the Tribunal has also not adequately compensated towards attender charges, considering the nature of the injuries sustained by the Appellant as a result of the accident.

7. Per contra, the learned Counsel for the second respondent Insurance Company would submit that the Tribunal has awarded a just compensation to the Appellant.

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) The accident took place on 23.07.2008. The nature of injuries sustained by the Appellant is not disputed by the second respondent before the Tribunal. Admittedly, the Appellant lost his left eye and his head bone was also

fractured as a result of the accident.

(b)The Appellant was aged 39 years and a Power Loom Weaver at the time of accident. These facts are not disputed by the second respondent before the Tribunal. Since the accident happened in the year 2000, considering the nature avocation of the Appellant, the fixation of his monthly income at Rs.3000/- in the considered view of this Court is low and it has to be enhanced to Rs.4,500/-.

9.Considering the avocation of the Appellant at the time of accident and considering the nature of injuries sustained by the Appellant, the Tribunal ought to have awarded compensation towards loss of future prospects to the Appellant. Therefore, this Court is of the considered view that 40% of the monthly income of Rs.4,500/- is a just compensation towards the loss of future prospects.

10.Considering the nature of injuries and nature of avocation of the Appellant, the multiplier method should be adopted by adding the loss of future prospects for assessing the loss of income. Applying the multiplier method, compensation payable to the Appellant towards loss of income is as follows:

Loss of Income :Rs.4,500x40% = Rs.6,300

6,300x12x15x60% = Rs.6,80,400

Since the Appellant has lost one of his eyes as a result the accident, the Tribunal ought to have awarded attender charges to the Appellant, which the Tribunal has failed to grant under the impugned Award.

11.This Court fixes the attender charges payable to the Appellant at Rs.20,000/-. In respect of the other heads awarded by the Tribunal, this Court is of the considered view that no interference is called for.

12.In the result, the Award passed by the Tribunal in M.C.O.P.No.176 of 2010 dated 20.07.2010 is enhanced in the following manner:

S.No .	Heads	Compensatio n awarded by the Tribunal	Enhanced amount
1	Loss of Income Rs.4,500x40% = 6,300 6,300x12x15x60%	Rs.3,24,000 /-	Rs.6,80,400/-
2	Attender Charger	Nil	Rs.20,000/-

S.No .	Heads	Compensation awarded by the Tribunal	Enhanced amount
3	Pain & Sufferings	Rs.25,000	Rs.25,000/-
4	Extra nourishment	Rs.8,000/-	Rs.8,000/-
5	Transportation	Rs.5,000/-	Rs.5,000/-
6	Future Medical Expenses	Rs.10,000/-	Rs.10,000/-
7	Medical Expenses	49,100/-	Rs.49,100/-
	Total	Rs.4,21,100/-	Rs.7,97,500/-

13. In the result, the appeal is partly allowed and the Award dated 20.07.2010 passed in M.C.O.P.No.176 of 2010 is enhanced to Rs.7,97,500/- instead of Rs.4,21,100/- together with interest at 7.5% per annum from the date of claim till the date of realization on the enhanced amount. The second respondent is directed to deposit Rs.7,97,500/- together with interest at 7.5% 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.176 of 2010 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate). Erode 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 together with accrued interest by filling an appropriate application. No costs.

tta/pam

Sd/-

Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate) Erode.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.R.Nalliappan, Advocate SR.No.61013

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.No.61453

VSNI (CO)

sm:16.10.2018

C.M.A.No.2763 of 2010