IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2897 of 2010

C.Senthil Nathan .. Appellant/Petitioner

Vs

1.R.Saravanan
(Was set exparte in the Trial Court)

2.New India Assurance Co. Ltd.,
F-46, 1st Main Road, Anna Nagar East,
Chennai - 600 102. ... Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 ofthe Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.07.2010 made in MACT O.P.No.2891 of 2006 on the file of the IV Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mrs.P.T.Salim Fathima
For Respondent 2: Mr.J.Chandran

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation in the Award dated 23.07.2010 passed by the Motor Accident Claims Tribunal, (IVth Court of Small Causes, Chennai) in MCOP.No.2891 of 2006

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

2. The Appellant sustained injuries as a result of an accident that took place on 14.04.2006 caused by a tempo traveler van bearing registration No. TN20-AA-5821 owned by the first respondent and insured with the second respondent. The Appellant preferred a compensation claim before the Motor Accident claims Tribunal in MCOP.No.2891 of 2006 seeking a compensation of Rs.7,00,000/- for the injuries sustained by him as a result of the above said accident. The Motor Accident Claims Tribunal, by its Award dated 23.07.2010 directed the second respondent to pay the Appellant/claimant a sum of Rs.1,91,200/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

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3. Aggrieved by the Award dated 23.07.2010 passed by the Motor Accident Claims Tribunal in MCOP.No.2891 of 2006, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard Mrs.P.T.Salim Fathima, learned counsel for the Appellant and Mr.J.Chandran, leanred counsel for the second respondent.

5. According to the learned counsel for the Appellant, the quantum of compensation awarded to the Appellant is very low and not in accordance with the settled principles of law. According to the learned counsel for the Appellant, at the time of the accident, she was aged 25 years and was a Design engineer earning a monthly salary of Rs.17,000/-. As a result of the accident, the Appellant sustained dislocation of PIP joint right 4th toe, fracture of proximal phalanx of right 5th toe and fracture base of 2nd metatarsal right foot. Wound debridment closed reduction of PIP joint right 4th and 5th toe, k-wire stablisation of PIP Joint right 5th toe and primary repair of flexation at right 5th toe. Skin grafting was also done at right foot. According to the learned counsel for the Appellant, the disability certificate was also produced by the Appellant before the Tribunal which was marked as Ex.P10.

6. According to the learned counsel for the Appellant, considering the nature of injuries sustained by the Appellant and his avocation, at the time of the accident, the quantum of compensation fixed by the Tribunal towards loss of earning during the treatment period, transportation cost, entra nourishment charges and permanent disability is low and not a just compensation. Further the learned counsel for the Appellant contended that considering the nature of injuries sustained by the Appellant, the Tribunal ought to have awarded compensation towards attender charges and loss of amenities which were not awarded under the impugned Award.

7. Per contra, learned counsel for the second respondent Insurance Company would submit that the Tribunal has awarded a just compensation to the Appellant. According to the Learned counsel for the second respondent, the Appellant sustained only simple injuries and therefore, the compensation awarded by the Tribunal is a just compensation.

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 occupation of the Appellant has not been disputed by the second respondent before the Tribunal.

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b) The nature of injuries sustained by the Appellant has also not been disputed by the second respondent before the Tribunal.

c) The Appellant has filed his salary certificate before the Tribunal which was marked as Ex.P7 which discloses that the Appellant was earning a monthly salary of Rs. 17,000/- at the time of the accident. No contra evidence has been produced by the second respondent before the Tribunal to disprove the claim of the Appellant that he was earning a monthly salary of Rs.17,000/- at the time of the accident.

d) The Appellant has also produced disability certificate before the Tribunal. Even though the Appellant has produced the disability certificate which discloses that the percentage of disability is 25%, the Tribunal without any basis has assessed the disability of the Appellant at 20%. No contra evidence has also been produced by the second respondent to disprove the percentage of disability suffered by the Appellant as a result of an accident.

e) It is evident from the discharge summary Ex.P3 that the Appellant had taken treatment as in-patient in a hospital between 14.04.2006 and 15.05.2006 for a period little more than a month. This fact has also not been disputed by the second respondent before the Tribunal.

f) In the considered view of this Court, the Award of compensation in favour of the Appellant towards loss of earnings, transporatation costs, extra nourishment charges and permanent disability is low and not in accordance with the settled principles of law as laid down by the decisions of this Court as well as the Hon'ble Supreme Court.

g) The Tribunal has also not awarded any compensation towards attender charges and loss of amenities, considering the nature of occupation of the Appellant at the time of the accident and the injuries he had sustained as a result of the accident.

9. Considering all these factors, this Court is of the considered view that the Tribunal ought to have awarded a higher compensation to the Appellant.

10. In the light of the above, the compensation awarded to the Appellant has to be enhanced from Rs.1,91,200/- to 2,66,200/- in the following manner:

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Head	Amount Awarded by the Tribunal	Modified Amount
Loss of Earnings during treatment period	Rs.36,000/-	Rs.68,000/-
Transport	Rs.5,000/-	Rs.10,000/-
Extra Nourishment	Rs.5,000/-	Rs.10,000/-
Damages	Rs.2,000/-	Rs.2,000/-
Medical Expenses	Rs.78,200/-	Rs.78,200/-
Pain and Suffering	Rs.25,000/-	Rs.25,000/-
Permanent Disability	Rs.40,000/-	Rs.50,000/-
Attender Charges	Nil	Rs.10,000/-
Loss of Amenities	Nil	Rs.13,000/-
Total	Rs.1,91,200/-	Rs.2,66,200/-

11. In the result, the Appeal is partly allowed by enhancing the compensation from Rs.1,91,200/- to Rs.2,66,200/- and the second respondent is directed to deposit the modified amount Rs.2,66,200/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, to the credit of MACT O.P.No.2891 of 2006 onthe file of the IV Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of MACT O.P.No.2891 of 2006 onthe file of the IV Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai along with accrued interest by filing an appropriate application. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
   IV[th] Court of Small Causes, Chennai

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Copy to
The Section officer
VR Section,
High Court, Madras.

+1 CC to Mr.M. Swamikannu, Advocate sr 62377.

C.M.A.NO.2897 of 2010

RJ(CO)
SP(09/10/2018)

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