

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3674 of 2010

Nallurajan

... Appellant/Petitioner

Vs.

1.Sugunarani

2.New India Assurance Company Limited,
No.92, East Coast Chambers 1st Floor,
G.N.Chetty Road, T.Nagar, Chennai.
(1st Respondent set exparte)

... Respondents/Respondents

Prayer:

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the M.C.O.P.No.49 of 2007, dated 17.04.2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents: Ms.R.Srividya for R2.

: R1-Exparte

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 17.04.2009 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.2, Salem in M.C.O.P.No.49 of 2007.

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

(i) The appellant sustained injuries on 15.02.2006 as a result of an accident caused by a lorry bearing Reg.No. TN 30 T 0381 owned by the first respondent and insured with the second respondent. The appellant preferred a claim petition before the Motor Accident Claims Tribunal in M.C.O.P.No.49 of 2007 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims

Tribunal, by its award dated 17.04.2009 passed in M.C.O.P.No.49 of 2007, directed the second respondent to pay the appellant a sum of Rs.99,000/- together with interest at 7.5% per annum from the date of claim petition till the date of realisation.

(ii). Aggrieved by the quantum of compensation awarded by the Tribunal in its award dated 17.04.2009 in M.C.O.P.No.49 of 2007, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Mr.K.Kuppusamy, learned counsel for the appellant and Ms.R.Srividya, learned counsel for the second respondent.

4. According to the learned counsel for the appellant, the accident having taken place in the year 2006, the disability compensation awarded by the Tribunal is too low. According to him, the appellant has produced a disability certificate, which is marked as Exhibit P.7 before the Tribunal, which confirms that the appellant has sustained 30% Permanent Disability. But, the Tribunal has awarded only Rs.45,000/- towards the 30% Permanent Disability. According to him, the Tribunal ought to have awarded a much higher compensation towards the disability suffered by the appellant, who was aged 21 years and was a qualified driver. According to him, the Tribunal has erroneously awarded inadequate compensation towards Extra Nourishment Charges. Further, he contended that the Tribunal has not awarded adequate compensation towards Pain and Sufferings and not awarded any compensation towards Attender charges and Loss of Income during Treatment Period.

5. Per contra, the learned counsel for the second respondent/ Insurance Company would submit that the compensation awarded to the appellant is a just compensation, considering the nature of injuries sustained by him as well as his age and avocation.

6. This Court after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective learned counsels observes the following:

(a) It is an undisputed fact that the appellant sustained injuries, as a result of an accident caused by a lorry insured with the second respondent/ Insurance Company. The nature of injuries sustained by the appellant has also not been disputed by the second respondent before the Tribunal.

(b). The appellant was a qualified driver, aged 21 years at the time of the accident. The age and the avocation of the appellant has also not been disputed by the second respondent before the Tribunal.

(c). There is a clear finding given by the Tribunal that only due to the rash and negligent driving by the driver of the

lorry insured with the second respondent, the accident had happened, which resulted in injuries caused to the appellant.

(d). The appellant has produced a disability certificate, Exhibit P.7 before the Tribunal disclosing that he has suffered 30% Permanent Disability. No contra evidence has been produced by the second respondent to disprove the percentage of permanent disability suffered by the appellant. The Tribunal has awarded only a sum of Rs.45,000/- towards disability compensation. In the considered view of this Court, the Tribunal ought to have awarded a higher compensation considering the avocation of the appellant as well as the year of the accident. Since, the accident happened in the year 2006, this Court is of the considered view that a sum of Rs.60,000/- [Rupees Sixty Thousand only] will be the adequate compensation to the appellant towards his disability instead of Rs.45,000/-. Accordingly, a sum of Rs.60,000/- is awarded under 'Loss of Disability.'

(e). This Court is also of the considered view that the compensation awarded by the Tribunal towards pain and suffering and extra nourishment are also inadequate. In the considered view of this Court, the amount awarded under Pain and Sufferings, has to be enhanced from Rs.8,000/- to Rs.10,000/- and the amount awarded under Extra Nourishment has to be enhanced from Rs.3,000/- to Rs.5,000/-. Accordingly, a sum of Rs.10,000/- is awarded under the 'Pain and Sufferings' and a sum of Rs.5,000/- is awarded for 'Extra Nourishment.'

(f). Considering the nature of the injuries sustained the appellant, the Tribunal has erroneously not awarded any compensation towards Attender charges and Loss of Income during the treatment period. In the considered view of this Court a sum of Rs.5,000/- will have to be awarded to the appellant towards Attender Charges and a sum of Rs.12,000/- will have to be awarded under Loss of earning during Treatment period. Accordingly a sum of Rs.5,000/- is awarded under 'Attender Charges' and a sum of Rs.12,000/- is awarded under 'Loss of earning during Treatment Period'.

(g) The Tribunal ought not to have awarded Rs.8,000/- towards future medical expenses, as no evidence was let in by the appellant before the Tribunal to establish the same and hence a sum of Rs.8,000/- awarded by the Tribunal under Future Medical Expenses is deleted.

(h) Further, a sum of Rs.5,000/- awarded by the Tribunal under 'Transportation' and a sum of Rs.30,000/- awarded by the Tribunal under 'Medical Bills' remain unaltered.

9. In view of the above observations, this Court is of the considered view that the award dated 17.04.2009 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.49 of 2007 is enhanced in the following manner:

S.No	Heads	Amount awarded by the Tribunal	Amount enhanced by this Court
1.	Loss of disability -30%	45,000	60,000
2.	Pain & Sufferings	8,000	10,000
3.	Transportation	5,000	5,000
4.	Extra Nourishment	3,000	5,000
5.	Attender Charges	-	5,000
6.	Loss of earning during treatment period	-	12,000
7.	Future Medical expenses	8,000	-
8.	Medical Bills	30,000	30,000
	Total	99,000	1,27,000

In the result, the award is enhanced from Rs.99,000/- to Rs.1,27,000/- [Rupees One Lakh and Twenty Seven Thousand only] and the second respondent is directed to deposit the enhanced amount together with interest at 7.5% per annum from the date of claim till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The Second Respondent is directed to deposit the enhanced compensation awarded by this Court, along with accrued interest thereon to the credit of MCOP.No.49 of 2007, after adjusting the amount, if any, already deposited and on such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application before the Tribunal.

Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Vehicles Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.2,
Salem.

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

+1cc to Mrs.R.Sree Vidhya, Advocate Sr.65267

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