

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3144 of 2008

E.Devendran

...Appellant /Petitioner

Vs

1.M/s.Hello Chennai Water Private Ltd.,
No.9, Vijayaraghava Road,
T.Nagar, Chennai - 600 017.

2.The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai-600 001.

...Respondents/Respondents

(R-1 exparte in Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Degree dated 21.09.2007 in M.C.O.P.No.4401 of 2004 on the file of the Motor Accidents Claims Tribunal, IIIrd Judge, Court of Small Causes at Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondents : R1 - Ex parte
Mr.K.Padmanabhan for R2

JUDGMENT

The instant appeal has been filed by the Appellant seeking enhancement of compensation under the Award dated 21.09.2007, passed by the Motor Accidents Claims Tribunal, IIIrd Judge, Court of Small Causes at Chennai in M.C.O.P.No.4401 of 2004.

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

(i)The Appellant sustained injuries on 24.04.2004 as a result of an accident caused by rash and negligent driving by the

driver of the Mini Dor Delivery Van bearing Registration No.TN-09-AB-5760 insured with the the second respondent.

(ii)The Appellant preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.4401 of 2004, seeking a compensation of Rs.3,00,000/-.

(iii)The Motor Accident Claims Tribunal by its Award dated 21.09.2007 in M.C.O.P.No.4401 of 2004, directed the second respondent to pay the Appellant a sum of Rs.57,000/- together with interest at 7.5% per annum from the date of claim till the date of realization.

3.Aggrieved by the Award dated 21.09.2007, passed in M.C.O.P.No.4401 of 2004, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4.Heard, Mr.S.Gangaram Prasad, learned Counsel for the Appellant and Mr.K.Padmanabhan, learned Counsel for the second respondent.

5.According to the learned Counsel for the Appellant, the Tribunal erred in awarding a low compensation of Rs.57,000/- as against the claim of Rs.3,00,000/-. The learned Counsel contended that the Tribunal erred in computing the compensation under the Motor Vehicles Act and ought to have computed the compensation as per Section 4 of the Workmen's Compensation Act since the injured claimant was a load man and employed with first respondent.

6.The learned Counsel further contended that even though, the Appellant produced a disability certificate, which confirms that he suffered 40% disability as a result of the accident, the Tribunal has erroneously without any basis has assessed the disability at 30% and has awarded only a sum of Rs.30,000/- as permanent disability compensation.

7.The learned Counsel for the Appellant further contended that the compensation awarded under the heads transportation cost, extra nourishment charges and pain and suffering is also inadequate.

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)It is an undisputed fact that the Appellant was aged 39 years at the time of accident and was working as a load man.

(b)It is also an undisputed fact that he sustained grievous injuries and sustained fracture of both bones in the left leg, abrasions and lacerations.

(c)The disability certificate which is marked as Ex-P5

discloses that the Appellant suffered 40% disability as a result of the accident.

(d) No contra evidence was produced by the second respondent before the Tribunal to disprove the percentage of disability claimed by the Appellant. Without any basis, the Tribunal has assessed the disability of the Appellant at 30%.

(e) The Appellant was admitted in the Government Stanley Hospital at Chennai as an inpatient from 24.04.2004 to 27.04.2004 and there after, he took outpatient treatment for about two months in the said Hospital and subsequently at Puthoor for about two months. The said statement of the Appellant before the Tribunal was not disproved by the second respondent by placing any contra evidence.

9. The Tribunal has assessed the notional income of the Appellant at Rs.3000/- per month. The accident happened on 24.04.2004. Being a load man, this Court is of the considered view that the fixing of the notional income at Rs.3000/- per month is low considering the standards of wages payable for a load man in the year 2004.

10. The Learned Counsel for the Appellant has also placed reliance of a single Judge Judgment of this Court in the case of Managing Director, State Corporation limited, Vs Valliyammal and another reported in 2011 1 TN MAC 793 wherein this Court has fixed the monthly income of the claimant at Rs.4,500/- for an accident which happened on 21.06.2002. Even in the said reported case, the claimant did not produce any documentary evidence to prove his monthly income and in that case, the claimant was an agriculturist. Applying the same yardstick, this Court is of the considered view that a sum of Rs.4,500/- per month ought have been fixed by the Tribunal as the monthly income of the Appellant at the time of accident.

11. This Court is also of the considered view that the Tribunal ought to have awarded Rs.5,000/- instead of Rs.1000/- towards transportation cost, Rs.5000/- instead of Rs.1,000/- towards extra nourishment cost, Rs.20,000/- instead of Rs.10,000/- towards pain and suffering.

12. Without any basis, the Tribunal has assessed the disability at 30% even though, the disability certificate discloses disability at 40%.

13. This Court is of the considered view that the compensation awarded towards permanent disability by the Tribunal is low and should be enhanced to Rs.70,000/- considering the avocation of the Appellant who was a load man at the time of the accident and also considering the nature of injuries sustained by him as a result of the accident.

14. In the result, the Award passed by the Tribunal in

M.C.O.P.No.4401 of 2004 dated 21.09.2007 is enhanced in the following manner:

S.No.	Heads	Compensation awarded by the Tribunal	Enhanced amount
1	Loss of earning during period of treatment (for 4 months)	Rs.12,000/- (Rs.3,000/-x4)	Rs.18,000/- (Rs.4,500/-x4)
2	Transport to Hospital	Rs.1,000/-	Rs.5,000/-
3	Extra Nourishment	Rs.1,000/-	Rs.5,000/-
4	Damages to Clothing & Articles	Rs.1,000/-	Rs.1,000/-
5	Medical Expenses	Rs.1,000/-	Rs.1,000/-
6	Other Expenses	Rs.1,000/-	Rs.1,000/-
7	Pain and suffering	Rs.10,000/-	Rs.20,000/-
8	Permanent Disability	Rs.30,000/-	Rs.70,000/-
	Total	Rs.57,000/-	Rs.1,21,000/-

15. In the result, the appeal is partly allowed and the Award dated 21.09.2007, passed in MCOP No.4401 of 2004 is enhanced to Rs.1,21,000/- instead of Rs.57,000/- together with interest 7.5% per annum from the date of claim till the date of realization. The second respondent is directed to deposit Rs.1,21,000/- 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 MCOP No.4401 of 2004 on the file of the Motor Accidents Claims Tribunal, IIIrd Judge, Court of Small Causes at Chennai within a period of eight weeks from the date of receipt of the copy 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.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

tta/pam

To

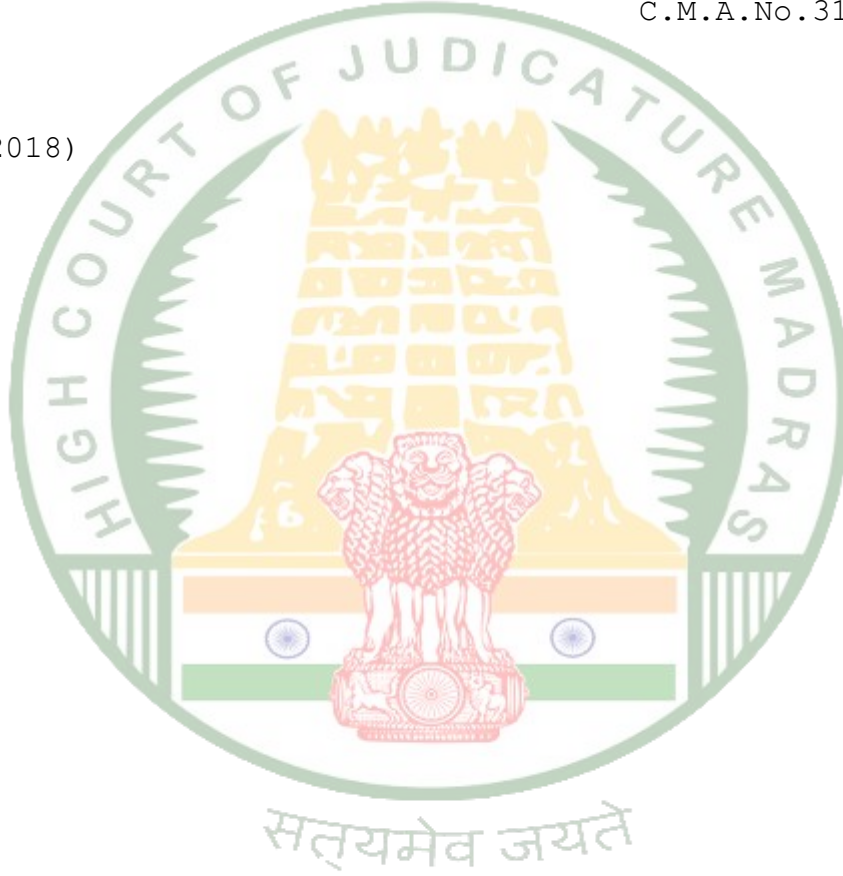
1.The Motor Accidents Claims Tribunal,
IIIrd Judge, Court of Small Causes at Chennai.

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

+lcc to Mr.S.Gangaram Prasad, Advocate, S.R.No. 61119

C.M.A.No.3144 of 2008

SR(CO)
GN(22/10/2018)



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