

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

C.M.A.No.380 of 2013

B.Sridhar

... Appellant (Claimant)

Vs.

1.Rajkumar

2.R.Ravinder Singh

3.The National Insurance Company Ltd.,

Cal-Div.XV, 6th Floor,

Rabindra Sarani,

Kolkotta-700 001.

... Respondents (Respondent)

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.07.2012 made in M.C.O.P.No.3402 of 2008 on the file of the Motor Accidents Claims Tribunal (XVI Additional District Judge) at Chennai.

For Appellant : Mr.S.Francis Ashok

For Respondents: Mr.R.Sreevidhya (For R3)

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (XVI Additional District Judge) at Chennai, in and by award dated 05.07.2012 in M.C.O.P.No.3402 of 2008, the claimant has filed the present appeal seeking enhancement of compensation.

2.Since the present appeal has been filed only challenging the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3.So far as the quantum of compensation is concerned, it is the case of the claimant before the Tribunal that he was working

in a private concerned namely Optic World and earning a sum of Rs.18,000/- per month. On account of the accident, that had occurred on 22.06.2005 involving the lorry bearing No.HR-63-0854 owned by the 1st respondent and insured with the 3rd respondent/Insurance Company, the claimant had sustained fracture on his right hand and a surgery was done. Further, due to the disability suffered by him on account of the accident, he is unable to do his works as he was doing before the accident. Hence, he made a claim for Rs.20 lakhs as compensation.

4.Before the Tribunal, in order to prove the income earned by the claimant, on the side of the claimant, he examined himself as P.W.1, besides examining his employer one Mahesh as P.W.2 and the Doctor as P.W.3 and marked ten documents as Ex.P.1 to Ex.P.10. On the side of the respondent, neither oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has passed an award for a total sum of Rs.1,96,100/-. The break up details of the same are as follows

Compensation for 40% disability (40 x 2000)	
=Rs.80,000/-	
Compensation for loss of income	=Rs.15,000/-
Compensation for his pain and sufferings	=Rs.20,000/-
Transport expenses, attender and extra-nourishment	=Rs.10,000/-
Towards Medical Bills	=Rs.71,100/-
Total	=Rs.1,96,100/-

Not being satisfied with the quantum of compensation, the claimant has filed the present appeal.

6.It is the main contention of the learned counsel for the appellant/claimant that though the Doctor-P.W.3 had assessed the disability suffered by the claimant/victim at 50%, the Tribunal without assigning any reason has reduced the percentage of disability to 40%, which resulted in awarding an inadequate compensation. Hence, according to the learned counsel for the appellant/claimant, by fixing 50% disability, the compensation amount under the head of disability has to be enhanced. Further, the Tribunal has not awarded adequate compensation under other heads also, hence, proper enhancement has to be made in the compensation amount awarded by the Tribunal.

7.Per contra, the learned counsel for the Insurance Company made her submissions supporting the award passed by the Tribunal.

8.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record

and We find that as contended by the learned counsel for the appellant/claimant, though the Doctor-P.W.3 had assessed the disability suffered by the victim at 50%, the Tribunal has reduced the percentage of disability to 40% without assigning any valid reason. Therefore, We are of the opinion that the percentage of disability fixed by the Tribunal is not correct. Hence, in our opinion, by fixing the percentage of disability suffered by the victim at 50%, the compensation amount awarded by the Tribunal could be enhanced to arrive at a just and proper compensation. If percentage of disability is taken as 50% and a sum of Rs.2,000/- is awarded for each percentage, then, the compensation for disability works out to Rs.1,00,000/-. Hence, the sum of Rs.80,000/- awarded by the Tribunal under the head of Disability is hereby modified and enhanced to Rs.1,00,000/-.

9. That apart, We find that the sum of Rs.20,000/- awarded by the Tribunal for pain and sufferings appears to be on the lower side. Hence, the same is hereby enhanced to Rs.30,000/-. Similarly, the Tribunal has awarded only a meagre sum of Rs.10,000/- for transport expenses, attender charges and extra-nourishment, which appears to be an inadequate compensation. Hence, a sum of Rs.5,000/- each is awarded for transportation and attender charges and a sum of Rs.10,000/- is separately awarded for extra-nourishment. Further, it is seen that the Tribunal has not awarded any amount for loss of amenities. Considering the fact that on account of the disability suffered by him, the victim would find it difficult to do his day-to-day work as he was doing before the accident, a sum of Rs.15,000/- is hereby awarded under the head of loss of amenities. Since the sum of Rs.71,100/- awarded by the Tribunal is supported by medical bills, the same is hereby confirmed. Consequently, the total compensation amount of Rs.1,96,100/- awarded by the Tribunal is hereby modified and enhanced to Rs.2,51,100/-. The break up details of the modified/enhanced compensation amount are as follows_

Compensation for 50% disability (50 x 2000)=	Rs.1,00,000/-
Compensation for loss of income	=Rs. 15,000/-
Compensation for his pain and sufferings	=Rs. 30,000/-
Transportation	=Rs. 5,000/-
Attender charges	=Rs. 5,000/-
Extra-nourishment	=Rs. 10,000/-
Loss of amenities	=Rs 15,000/-
Towards Medical Bills	=Rs 71,100/-

Total =Rs.2,51,100/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.1,96,100/- awarded by the Tribunal is hereby modified and enhanced to Rs.2,51,100/-. The Insurance Company is directed to deposit the

entire modified compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same with accrued interest thereon by making necessary application before the Tribunal. No costs.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To,

1. The (XVI Additional District Judge)
The Motor Accidents Claims Tribunal at Chennai.

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

+1 CC to Mr.S. Francis Ashok, Advocate sr 5376.

C.M.A.No.380 of 2013

SV(CO)
SP(25/04/2018)

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