

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.827 of 2008

E.C.Kumanan

...Appellant

Vs

1.P.Prema

[R1 set ex-parte before Trial Court]

2.National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai-600 002.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.07.2007 made in MACT.O.P.No.4047 of 2004, on the file of the VI Small Causes Court (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.K.Ayyadurai
for N.M.Muthurajan

For Respondent : R1 set ex parte
Mr.N.Vijayaraghavan for R2

J U D G M E N T

The instant appeal has been filed challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai in its Judgment and Decree dated 04.07.2007, passed in MACT.OP.No.4047 of 2004.

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

(i)On 25.04.2004, at about 10.30 hours, the Appellant was traveling as a pillion rider in a Motor Cycle bearing Registration No.TN-09-114 from Saidapet to Guindy along Alandur road from north to south while he was proceeding along the Coovam bridge, the lorry bearing Registration No.TN-10-F-1818 insured with the the second respondent due to the rash and negligence driving by its driver dashed against the Motor Cycle, in which the Appellant was a pillion rider causing grievous injuries to the Appellant. The Appellant preferred a claim

before the Motor Accident Claims Tribunal, seeking compensation for the injuries sustained by him on account of the said accident.

(ii) The Motor Accident Claims Tribunal by its judgment and decree dated 04.07.2007 in MACT.O.P.No.4047 of 2004, directed the second respondent to pay the Appellant a sum of Rs.1,91,000/- together with interest at 7.5% from the date of claim till date of realization and also awarded a sum of Rs.1,283/- towards Court fees and another sum of Rs.6,820/- towards Advocate fees.

3. Aggrieved by the quantum of compensation awarded under the impugned Award, the instant appeal has been filed by the Appellant/claimant seeking enhancement of compensation.

4. Heard, Mr.K.Ayyadurai, learned Counsel for the Appellant and Mr.N.Vijayaraghavan, learned Counsel for the second respondent.

5. The learned Counsel for the Appellant submits that even though the Appellant made a claim for a sum of Rs.16 lakhs before the Tribunal, only a sum of Rs.1,91,000/- was awarded to the Appellant by the Tribunal.

6. The learned Counsel for the Appellant submitted that on account of the accident, the Appellant suffered right leg fracture at three places, knee joint got dislocated and his ankle also got dislocated. He has also suffered a major muscle loss and four surgeries were conducted on the Appellant. The Appellant was treated as an inpatient for two and half months at a Private Hospital and also at Government Royapettah Hospital. The Appellant was bedridden for six months.

7. The learned Counsel submitted that the compensation for permanent disability is to be awarded based on the age, nature of injury and percentage of disablement. He contended that the Appellant was 23 years old at the time of accident and the Tribunal without considering any of these aspects, has mechanically awarded a sum of Rs.60,000/- as compensation for permanent disablement, which is very low and inadequate.

8. The learned Counsel for the Appellant further contended that considering the nature of the injuries sustained by the Appellant and the long period of hospitalization, the quantum of compensation awarded by the Tribunal is inadequate under the following heads:

- a) Loss of earning from 25.03.2004 to 25.11.2004
- b) Transport to Hospital
- c) Extra nourishment
- d) Damage to clothing and article

9.The learned Counsel for the Appellant further contended that the compensation for the loss of earning capacity awarded by the Tribunal is meagre and inadequate and not commensurate with the actual loss suffered by the Appellant on account of the accident.

10.The learned Counsel for the Appellant further submitted that the Appellant is a Tailor in Leather Garments and he was earning Rs.4,500/- per month at the time of the accident. Due to the accident, the Appellant is unable to squat and his right leg starts swelling if he stands continuously for more than 15 minutes. Due to the accident, the Appellant is also unable to pedal the Tailoring Machine.

11.The learned Counsel for the Appellant drew the attention of this Court to the evidence of Doctor and submitted that the earning capacity of the Appellant is very much affected on account of the injuries suffered by him due to the accident.

12.The learned Counsel for the Appellant then drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ICICI Lombard General Insurance Co. Ltd. vs. Ajay Kumar Mohanty and another reported in 2018(1)TNMAC 731 (SC) and referred to paragraph No.8 of the said judgment which reads as follows:

"18.In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd and Raj Kumar v. Ajay Kumar, must be followed by all the Tribunals and the High Courts in determining the quantum of Compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers Permanent Disability, then efforts should always be made to award adequate Compensation not only for the physical injury and treatment, but also for the Loss of Earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the Disability caused due to the accident."

13.According to the learned Counsel, as seen from the judgment compensation can be granted both on account of the permanent disability as well as for the loss of future earnings. According to the learned Counsel, the Tribunal has not awarded adequate compensation to the Appellant towards future earnings.

14.Per contra, the learned Counsel for the second respondent would submit that the Award passed by the Tribunal is a well considered Award and has been passed only in accordance with the settled principles of law.

15.This Court after considering the materials available on record and after perusing and 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 a Tailor at the time of accident. No contra evidence has also been placed by the second respondent/Insurance Company to disprove the claim of the Appellant that he was a Tailor.

b)The nature of the injuries suffered by the Appellant on account of the accident is also not disputed by the second respondent/ Insurance Company. As seen from the nature of injuries suffered by the Appellant, it is a grievous injury as he underwent hospitalization for two and half months and had to undergo four surgeries.

c)In view of his occupation as a Tailor, the grievous injury sustained by him would have certainly affected his tailoring business. Therefore, the Tribunal ought to have awarded compensation towards loss of earning capacity as well. Further, the Tribunal has also not awarded loss of income during the period of the medical treatment.

d)In view of the grievous injury sustained by the Appellant, he would certainly have to engage the services of an attender till the date of his recovery from his disability. The Tribunal has not awarded any amount towards attender charges, which he is entitled to.

17.Considering the above factors, this Court is of the considered view that the impugned Award dated 04.07.2007, passed in MACT.O.P.No.4047 of 2007 is hereby modified/enhanced in favour of the Appellant in following manner:

Heads	Amount Awarded by the Tribunal in Rs.	Modified/ enhanced amount in Rs.
Disability 60%	60,000	60,000
Loss of earning capacity $4,000 \times 12 \times 18 \times 20 / 100$	50,000	1,72,800
Pain of suffering	25,000	25,000
Mental agony	10,000	10,000
Loss of Marital Status	15,000	15,000
Extra Nourishment	2,000	2,000

Heads	Amount Awarded by the Tribunal in Rs.	Modified/ enhanced amount in Rs.
Transport to Hospital	5,000	5,000
Loss of i/c during treatment 4,000x6	18,000	24,000
Medical Bills	4,862.05	4,862
Damage to cloths	1,000	1,000
Attender charges	Nil	20,000
Total	1,90,862.05	3,39,662.00

18. In the result, the appeal is partly allowed by enhancing the compensation from Rs.1,91,000/- to Rs.3,39,662/- and the second respondent is directed to deposit the balance amount i.e. Rs.1,48,662/- (Rs.3,39,662-Rs.1,91,000) together with interest at 7.5% per annum to the credit of MCOP No.4047 of 2004, on the file of the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai within a period of four weeks from the date of receipt of this order. The Appellant is permitted to withdraw the said sum by filing an appropriate application. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

kyl/pam

To

1. The Motor Accident Claims Tribunal
(VI Small Causes Court), Chennai.

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

+1 CC to Mr.N.M. Muthurajan, Advocate sr 57398.

+1 CC to Mr.N. Vijaya Raghavan, Advocate sr 57741.

C.M.A.No.827 of 2008

SP(19/09/2018)