

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.07.2019

Delivered on : 18.09.2019

C O R A M:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No. 1340 of 2015

R. David ...Appellant/Petitioner

Vs.

1.A.Doraimurugan

2.The National Insurance Co.Ltd.,
Chennai Division - III,
P.B.No.1408, 35/18 North Usman Road,
H.M.Centre, II Floor,
T.Nagar, Chennai-17. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 15.06.2012 passed in MCOP.No.471 of 2007 on the file of XVII Additional Judge, the Motor Accidents Claims Tribunal, City Civil Court, Chennai.

For Appellant : M/s. T.G.Bala Chandran

For Respondents : M/s. D. Bhaskaran for R2
R1 was set exparte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgement and decree passed in MCOP.No.471 of 2007 dated 15.06.2012 by the learned XVII Additional Judge, the Motor Accidents Claims Tribunal, City Civil Court, Chennai.

2. Originally, the claimant had claimed a compensation of Rs.2,00,000/- before the Tribunal and the Tribunal has awarded a sum of Rs.1,58,813/-, aggrieved against which, the appellant/claimant has preferred an appeal for enhancement of compensation against the said award. Subsequently, by way of amendment petition in CMP.No.19197 of 2016, which has been ordered on 24.09.2018 by this court for enhancement of compensation to Rs.9,00,000/-, this appeal is listed today for disposal.

3. Brief facts leading to the claim application are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

On 01.01.2007 at about 1.00 hrs, when the claimant was proceeding at South Canal Bank Salai in front of Rationshop in a motor cycle bearing registration No.TN-07-AW-4048 from West to South and at that time, an auto bearing registration No.TN-07-AV-9275 driven by its driver in a rash and negligent manner from the opposite direction, hit the claimant's motor cycle. Due to the said accident, the claimant sustained grievous injuries and disability and he incurred heavy medical expenses and hence this appeal.

4. The second respondent / Insurance Company has filed a counter statement, stating that it is the petitioner, who suppressed the manner of the accident and the negligence on his part. The other facts regarding the nature of the injury, the income and occupation of the claimant were also denied by the Insurance Company as excessive and exorbitant. They further contended that at the time of accident, the driver of the auto neither possess valid driving license nor the owner of the vehicle placed valid vehicular documents before the Tribunal and hence, this respondent is not liable to pay any compensation to the appellant/claimant. The compensation claimed by the appellant/claimant is exorbitant. They further averred that the petitioner is also guilty of contributory negligence by his driving and hence they denied the liability as well as the total negligence on the part of the driver of the auto.

5. The Tribunal after analyzing the evidence and documents, placed before it, has awarded a sum of Rs.1,58,813/- (Rupees One Lakh Fifty Eight Thousand Eight Hundred and Thirteen only) against the claim of Rs.2,00,000/- (Rupees Two lakhs only) under the following heads :

Heads	Amount awarded by the Tribunal
55% Disability	Rs. 1,10,000/-
Medical Expenditure	Rs. 19,813/-
Loss of Income	Rs. 8,000/-
Pain and Sufferings	Rs. 15,000/-
Nutritious Food	Rs. 5,000/-
Transportation	Rs. 1,000/-
Total	Rs.1,58,813/-

6. Aggrieved against the said judgment, the claimant/Appellant has preferred this appeal.

7. It is the grievance of the appellant in the grounds of appeal that the Tribunal has not considered the fact that the

appellant, aged about 23 years, was an office boy in the ICICI Bank, Chennai, at the time of accident and was earning Rs.4000/- per month and on account of the above accident, the Appellant could not continue his work as before. Hence the court below ought to have applied multiplier method for calculating future loss of income and failed to consider that the injury sustained by the appellant are grievous in nature and the court below erred in awarding the reasonable compensation amount.

8. It is also the grievance of the appellant that the sum awarded under the heads of Nutrition, Transportation and pain and sufferings are very meager and the same have to be modified by considering the injuries and the disability sustained by the appellant.

9. Heard both sides and perused the documents available on record.

10. On perusal of records, it is seen that the Tribunal after investigation of evidence and documents placed before it, has awarded a sum of Rs.1,58,813/-/- (Rupees One Lakh Fifty Eight Thousand Eight Hundred and Thirteen only) against the claim of Rs.2,00,000/- (Rupees Two Lakhs only). Aggrieved against the said award, the appellant/claimant has preferred this appeal. It is argued by the appellant that he is unable to continue his work as he was doing before accident and hence the loss of income has not been properly considered by the Tribunal. The sum awarded for disability by taking Rs.2000/- per percentage is also not sustainable. It is also argued by the appellant that the total sum awarded by the Tribunal is not reasonable and against the law and provision.

11. On the grounds of appeal, the appellant/claimant has contended that the award by the Tribunal of Rs.1,58,813/- is very much on the meagre side since the nature of injuries sustained by the appellant/claimant is grievous in nature and also it is assessed by the two doctors as 20% disability and the same were not properly considered by the Tribunal by applying the multiplier method since the disability ought to have been taken at 70% when there is loss of functioning of left shoulder and also there is a difficulty for the appellant in taking the food properly. The sum awarded under the head of Pain and Suffering of Rs.15,000/- is also very much on the meagre side since the appellant was under continous treatment for the injuries sustained by him. The quantum ought to have been enhanced considering the functional damages of the injured. Other aspects such as nourishment and transport are also not very much reasonable and hence, that has to be properly enhanced. The loss of income awarded by the Tribunal at Rs.8000/- is very much low since he underwent treatment for a very long time. Further, the Tribunal has not awarded any sum for loss of amenities because his normal activities are very much affected by the injuries sustained by him in the

accident and hence the appellant sought for enhancement of compensation.

12. On hearing both sides and on perusal of records, it is observed that the appellant/ claimant has sustained grievous injuries due to the said accident. With regard to the nature of injuries sustained by the appellant, the documents filed before the Tribunal by him is the Government General Hospital O.P. Chit viz., Ex.P4; Ex.P5 - accident register copy; Ex.P9 - medical records; Exs.P10 and P12 are the Disability certificates.

13. It is contended by the learned counsel for the appellant that at the time of accident, the injured person was aged about 23 years and was working as a Office boy in the ICICI Bank and earning Rs.4000/- p.m., The claimant/appellant himself stated before the Tribunal that he sustained fracture on his left shoulder and also lost four teeth in his lower jaw. PW2 has stated that there is a fracture on the left clavicle and there was a cut injury on the right thigh of the appellant and he has calculated the permanent disability at 40%.

14. In the cross-examination, he has deposed that he has not given treatment to the petitioner. Further, there is no other fracture except fracture in the left clavicle bone. It is observed that the nature of the injuries sustained by the appellant is grievous and also the disability assessed by the doctor and taken by the Tribunal as 25%. Another Doctor viz., PW3, who is the dentist has examined the injured person and he has assessed the permanent disability as 30% because the appellant/claimant has lost four teeth in the right jaws due to the accident and calculated his permanent disability as 30%. Further his evidence before the Tribunal is that artificial teeth were fixed in the lower jaws. Hence, the Tribunal by analysing these aspects and the disability assessed by the doctors has fixed total disability at 55% and for percentage Rs.2000/- was calculated and the same has been arrived at Rs.1,10,000/-. The appellant is very much aggrieved and enclosed the medical records before this court by stating that the injured appellant was admitted as in-patient from 31.12.2006 to 09.01.2007. The relevant documents that were filed by the appellants were already referred as the accident register, medical records, disability certificates given by two doctors viz., PW2 and PW3. When the appellant has claimed a sum of Rs.9 lakhs as compensation by way of amendment, the appellant has not furnished any additional document apart from the medical records and the disability certificate filed before the tribunal.

15. On the other hand, the second respondent/Insurance Company has vehemently contended that at the time of accident, on 01.01.2007, the injured person was 23 years and he had only one fracture in the left clavicle bone and he has lost two teeth and hence, the assessment made by PW2 and PW3 are highly excessive. Since there is no functional disabilities he vehemently opposed for adopting the multiplier method. He further contended that the assessment made by the Tribunal is reasonable and therefore, it does not require any other modification.

16. Further, the grievance of the appellant is that inspite of the fact that the injuries sustained by him is grievous in nature, the disability assessed by the doctors is meagre and hence, the same ought to have been enhanced the disability by applying the reasonable multiplier method whereas the Tribunal has failed to do so.

17. In view of the arguments advanced on both sides and on perusal of records, this court opined that the assessment taken by the Tribunal at 55% is very much reasonable. It is seen from the arguments advanced by the appellant that there was no loss of earning capacity which requires to adopt multiplier method. Further, in the absence of any materials regarding the total disability and loss of amenities, the assessment made by the Tribunal by awarding Rs.2000/- per percentage is very much reasonable.

18. The learned counsel for the appellant contended that the injured person is an office boy and his injuries are also grievous in nature and hence the multiplier method has to be adopted by this court. The Learned counsel for the appellant also argued that the amount granted under the heads of pain and suffering, Nourishment and Transportation are all on the meagre side.

19. On perusal of the entire records, it is seen that no additional documents or proof were placed by the appellant to substantiate his claim for enhancement of compensation to the tune of Rs.9 Lakhs. On hearing both sides and considering the nature of injury and the period of treatment under gone by the appellant/claimant, this Court feels that there is no error in the order of the tribunal. Hence, the award passed by the tribunal under various heads are confirmed.

20. In the result, the award passed in MCOP.No.471 of 2007 dated 15.06.2012 by the learned XVII Additional Judge, Motor Accidents Claims Tribunal, City Civil Court, Chennai is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs.

21. The respondents 1 & 2 are directed to deposit the entire amount, awarded by the tribunal along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The XVII Additional Judge,
The Motor Accidents Claims Tribunal,
City Civil Court, Chennai.

+1 cc to Mr.T.G.Balachandran, Advocate,sr.80098

+2 cc to Mr.D.Bhaskaran, Advocate,sr.77943 & 80518

spd(co)
krd 23/9

C.M.A.No. 1340 of 2015

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