

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1048 of 2012

S.Perumal

... Appellant/Claimant

Vs.

1.M/s.Chettinad Builders Pvt. Ltd.,
Chenneerkuppam Village,
Bye-pass Road, Poonamallee,
Chennai - 600 056.
[R1 was set exparte in the trial court]

2.The Oriental Insurance Co. Ltd.,
UIL Buildings, 4th Floor,
No.8, Esplanade,
Chennai - 600 108. Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 22.09.2011 made in MACT.OP.No.1007 of 2008 on the file of the VI Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mrs.M.Sudha
for M/s.C and K Law Firm

For R2 : Mr.R.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.09.2011 made in M.A.C.T.O.P.No.1007 of 2008 on the file of the VI Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

2. The case of the appellant was that on 23.02.2008 at about 2.00 hours, the appellant who was a cleaner in concrete mixer lorry bearing registration No.TN-20-AQ-1377, was travelling along Rajiv Gandhi Salai from North to South direction, when the lorry was nearing HCL Company, Kandanchavadi, the driver of the said vehicle has driven the lorry in a rash and negligent manner

and dashed against a stationery lorry. Due to the said accident, the appellant sustained grievous injuries. Therefore, the appellant has filed a Claim Petition before the Motor Accident Claims Tribunal (VI Judge), Small Causes Court, Chennai claiming a sum of Rs.6,00,000/- as compensation under various heads. An FIR was registered at J9 - Thuraipakkam Police Station in Crime No.211 of 2008.

3. A counter was filed by the respondent denying all the averments and stating that the petitioner has to prove the existence of valid insurance policy and driving license for the concrete mixer lorry bearing registration No.TN-20-AQ-1377 and whether they were observing traffic rules and complying the same, however, it was the lorry bearing registration No.TSH-1126 suddenly applied break, due to the said fact the lorry bearing registration No.TN-20-AQ-1377 has hit on the stopped vehicle and due to the said impact the appellant sustained injuries. It was further claimed that neither the owner nor the insurance company of the said lorry bearing registration No.TSH-1126 was impleaded as a party to the claim petition, hence, the same is bad for non-joinder of necessary parties. Therefore, the 2nd respondent Insurance company prayed for dismissal of the same.

4. The petitioner was examined as PW1 and one M.Murugan was examined as PW2 and the Doctor was examined as PW3. Ex.P1 to Ex.P4 were marked on the side of the appellant. On the side of the respondent/ Insurance Company no witnesses were examined and no documents were marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.1,79,401/- as compensation under various heads. Aggrieved by the award, the appellant/claimant has preferred this appeal before this Court.

6. The learned counsel for the appellant would submit that the Tribunal has not considered that the appellant had suffered fracture over left knee and foot, amputation of left big toe, abrasions over left hand and lacerated injuries over right leg besides other severe injuries and he was taking treatment at Chettinad Hospital for months together and undergone surgeries. Even after prolonged treatment he was not able to do his normal avocation and day to day affairs. The learned counsel further submitted that the compensation awarded under various heads are very meager and the Tribunal did not consider the gravity of injuries suffered by the appellant/claimant, while awarding the compensation. It is her further claim that the Tribunal ought to have adopted multiplier method for computing loss of earning power. On the said contentions the learned counsel for the appellant seeks enhancement of the award amount.

7. The learned counsel for the 2nd respondent/ Insurance Company would submit that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

8. Heard the learned counsel on either side and perused the materials available on record.

9. This is a claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal with respect of negligence as well as the liability of the second respondent insurance company to pay compensation.

10. Regarding quantum, the appellant who was examined as PW1 had deposed that he was 20 years at the time of accident and was earning Rs.6,000/- per month and due to the accident he sustained fracture and crush injury over left thigh, left foot, amputation of left big toe, abrasion over left hand, lacerated injury over right leg and severe injuries all over the body. Immediately he was admitted in Chettinad Hospital, wherein he was treated as inpatient and undergone surgery twice and continued treatment as outpatient for six months. He had produced various medical certificates and bills to show that he had sustained amputation of left great toe and 'L' shaped laceration above left knee. From 23.02.2008 to 07.04.2008 he was admitted as inpatient and due to the crush injury in left thigh and left foot he had pain and swelling in the left leg continuously. He cannot squat on the floor and fold his left leg, climb stairs and cannot do any work. PW3, the Doctor who treated the appellant clinically has deposed that the total disability suffered by the appellant was fixed at 50% which is partial permanent. The said disability certificate was marked as Ex.P4.

11. On a consideration of the materials produced regarding the treatment undergone by the appellant and various surgeries undergone on his leg, the Tribunal had fixed the percentage of disability at 45%, since no x-ray report has been filed to support the assessment of his disability, moreover, the petitioner is only a lorry cleaner and the injuries sustained by him will not amount to 100% disablement. Therefore, this court finds that the fixation of disability at 45% is just and reasonable. Accordingly, Rs.2,000/- was awarded per percentage and $\text{Rs.2,000/-} \times 45 = \text{Rs.90,000/-}$ was awarded towards disability, and the same is confirmed by this court.

12. Though PW1 had deposed that he was earning Rs.6,000/- per month, no evidence was produced to substantiate the same, hence, the Tribunal had fixed his income as Rs.4,500/- per month as a cleaner, which is also just and reasonable. As regards Transportation, the Tribunal has awarded Rs.7,000/-. Since the petitioner was treated as inpatient from 23.02.2008 to 07.04.2008 and later he was treated as outpatient, the appellant would have incurred expenditure towards transportation. Hence, this court deems it fit to enhance the amount awarded under the head transportation to Rs.10,000/-. The Tribunal had awarded a sum of Rs.10,000/- towards loss of amenities, the same is enhanced to Rs.20,000/- due to the fact that he lost his finger, due to which he finds it difficult to climb the stairs anywhere and to claim the vehicle, hence Rs.20,000/- is awarded for the same. The Tribunal has awarded Attender charges of Rs.5,000/-. Since, the appellant was treated as an inpatient from 23.02.2008 to 07.04.2008, he would have incurred certain amount towards attender charges and this court feels that the sum of Rs.5,000/- awarded towards attender charges is meager and hence, the same is enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and they are confirmed by this court. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1 .	Loss of income for three months at the rate of Rs.4,500/- p.m	13,500	13,500	Confirmed
2 .	Transportation	7,000	10,000	Enhanced
3 .	Extra Nourishment	10,000	10,000	Confirmed
4 .	Damage to clothes	1,000	1,000	Confirmed
5 .	Medical expenses	7,910	7,910	Confirmed
6 .	Loss of Amenities	10,000	20,000	Enhanced
7 .	Attender's Charge	5,000	10,000	Enhanced
8 .	Pain and suffering	35,000	35,000	Confirmed

9.	Disability of 45% at Rs.2,000/- per percentage	90,000	90,000	Confirmed
	Total	1,79,410	1,97,410	Enhanced by 18,000/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,79,410/- awarded by the Tribunal by order dated 22.09.2011 in M.A.C.T.O.P.No.1007 of 2008 is hereby enhanced to Rs.1,97,410/-.

14. The second respondent insurance company is directed to deposit the enhanced award amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
VI Judge, Small Causes Court, Chennai.

+1cc to Mr.C.Munusamy, Advocate Sr.100661
+1cc to Mr.R.Sivakumar, Advocate Sr.100539

WEB COPY

C.M.A.No.1048 of 2012

spd[col]
srg 07/08/2020