

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.111 of 2012

J.Murali

...Appellant / Petitioner

..Vs..

1.N.Vasudevan

(R1 was set exparte in the trial court)

2.The Divisional Manager

United India Insurance Co. Ltd.,

Katpadi Road

Vellore.

...Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2011 made in MACT.O.P.No.285 of 2011 on the file of the Motor Accidents Claims Tribunal, Fast Track Court (Addl. District and Sessions Judge), Vellore.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.S.Arunkumar for R2
R1- Ex parte

J U D G M E N T

The instant appeal has been filed challenging the award dated 30.09.2011 passed by the Motor Accident Claims Tribunal, Fast Track Court (Addl. District and Sessions Judge), Vellore in MCOP.No.285 of 2011.

Brief facts leading to the filing of the instant appeal:

2. The Appellant sustained injuries as a result of an accident caused by a bus bearing registration No.TN23 AB 8299 on 02.07.2007 owned by the first respondent and insured with the second respondent. According to the Appellant, he sustained laceration on the left knee, deformity, diffuse swelling, tenderness of left thigh, dislocation of left knee, and fracture of left femur as a result of the aforesaid accident. The Appellant preferred a claim before the Motor Accident Claims

Tribunal in MCOP.No.285 of 2011 seeking compensation of Rs.10,00,000/- for the injuries sustained by him. The Motor Accident Claims Tribunal by its Award dated 30.09.2011 in MCOP.No.285 of 2011 directed the second respondent to pay the Appellant a sum of Rs.1,60,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. Aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant has preferred this appeal seeking enhancement of compensation.

Submissions of learned counsels:

3. Heard Mr.R.Nalliyappan, learned counsel appearing for the Appellant and Mr.S.Arun Kumar, learned counsel appearing for the second respondent. The first respondent remained ex parte both before the Tribunal as well this Court.

4. According to the Appellant, he was a mason at the time of accident which resulted in his total immobilization for a long period of time. According to him, he was hospitalized for more than 89 days. But according to the learned counsel for the Appellant, the Tribunal has not adequately compensated the Appellant under the impugned Award. According to the Appellant, the Tribunal has not considered the gravity of injuries as well as the impact and consequences of the injuries, before assessing the compensation amount.

5. Per contra, learned counsel appearing for the second respondent would submit that the compensation awarded by the Tribunal is a just compensation, considering the fact that the Appellant has not produced any document to prove that he was a mason at the time of accident. Further according to him, he has been adequately compensated under all heads including the head loss of income.

Discussion:

6. This Court has perused and examined the impugned Award.

7. Admittedly, the Appellant has sustained laceration on the left knee, deformity, diffuse swelling, tenderness of left thigh, dislocation of left knee, and fracture of left femur. A rod was also implanted in the right leg of the Appellant. The nature of injuries sustained by the Appellant has not been disputed by the second respondent and no contra evidence has

been produced by them to disprove the claim of the Appellant. Even though the Appellant did not produce any documentary evidence before the Tribunal to prove his avocation, i.e., mason, no contra evidence has been produced by the second respondent to disprove the statement made by the Appellant that he is a mason. Under the impugned Award, the Tribunal has assessed the disability of the Appellant at 50% and has assessed the compensation payable to the Appellant for the said disability at Rs.75,000/-. The details of compensation awarded by the Tribunal under various heads are as follows:

Sl. No	Heads	Award Amount (Rs.)
1	50% of disability	75,000/-
2	Pain and suffering	25,000/-
3	Loss of income	15,000/- (5,000/- x 3)
4	Extra nourishment	5,000/-
5	Attender Charges	5,000/-
6	Transportation Costs	5,000/-
7	Loss of amenities	5,000/-
8	Loss of estates	5,000/-
9	Shock and mental agony	5,000/-
10	Medical expenses	5,000/-
11	Future medical Expenses	10,000/-
	Total	1,60,000/-

8. Considering the long period of hospitalization, i.e., 89 days which has not been disputed by the second respondent and which is also evidenced by the discharge summary marked as Ex.P5 before the Tribunal, this Court is of the considered view that the loss of income granted by the Tribunal is less. Considering the fact that the appellant is a mason, the aforesaid injuries would certainly have immobilized him for a long period of time. Further, in the considered view of this Court, a sum of Rs.15,000/- awarded towards loss of income for a period three months will have to be enhanced to Rs.30,000/- for a period of

six months. Further in the considered view of this Court, the amount awarded towards attender charges, loss of amenities and transportation costs is less, in view of the long period of hospitalization of the Appellant and his post operative medical treatment. In the considered view of this Court, the compensation awarded towards attender charges, loss of amenities and transportation costs are enhanced to Rs.10,000/- each from Rs.5,000/- each. For the foregoing reasons, in the considered view of this Court, the following amounts under various heads of compensation payable to the Appellant is the just compensation. The details of compensation modified by this Court under various heads are as follows:

Sl. No	Heads	Modified Award Amount (Rs.)
1	50% of disability	75,000/-
2	Pain and suffering	25,000/-
3	Loss of income	30,000/- (5,000 x 6)
4	Extra nourishment	5,000/-
5	Attender Charges	10,000/-
6	Transportation Costs	10,000/-
7	Loss of amenities	10,000/-
8	Loss of estates	5,000/-
9	Shock and mental agony	5,000/-
10	Medical expenses	5,000/-
11	Future medical Expenses	10,000/-
	Total	1,90,000/-

Conclusion:

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the tribunal is enhanced from Rs.1,60,000/- to Rs.1,90,000/- and the second respondent is directed to deposit the modified award amount together with interest at the rate of 7.5% per annum from the date of claim

till the date of deposit, after deducting the amount already deposited, to the credit of MCOP.No.285 of 2011 on the file of the Motor Accident Claims Tribunal, Vellore within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of MCOP.No.285 of 2011 together with accrued interest by filing an appropriate application. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal, Fast Track Court
(Addl. District and Sessions Judge), Vellore.

2.The Section Officer
V.R.Section, High Court of Madras.

+1 cc to Mr.S.Arun Kumar, Advocate, S.R.No.34527

+1 cc to Mr.R.Nalliyappan, Advocate, S.R.No.34927

C.M.A.No.111 of 2012

JP(CO)
SSM(19/09/2019)

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