IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2783 of 2015
and C.M.P.No.18094 of 2018

S.Santhakumar ... Appellant/Petitioner

vs.

1.A.Antony Dhas

2.United India Insurance Company Ltd.,
No.21, Raja Annamalai Road,
Purasawakkam,
Chennai - 84. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 30.04.2015 passed in M.C.O.P.No.449 of 2012 on the file of the III Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.P.M.Shahul Hameed for R1
-No appearance

Mr.D.Bhaskaran for R2

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai in M.C.O.P.No.449 of 2012.

Brief facts leading to the filing of this appeal:

2.The Appellant sustained grievous injuries on 06.08.2011 as a result of an accident caused by a motorcycle bearing

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Registration No.TN-07-AH-9461 owned by the first respondent and insured with the second respondent. The accident happened when the Appellant was standing opposite to Anna University Bus stand and was waiting for the bus when a motorcycle bearing Registration No.TN-07-AH-9461 (insured vehicle) dashed against the Appellant. Due to said accident, the Appellant sustained grievous injuries.

3.He preferred a claim before the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.449 of 2012 against the respondents seeking a compensation of Rs.1,28,93,000/- for the injuries sustained by him as a result of the accident caused by the insured two wheeler.

4.The Motor Accident Claims Tribunal, by its Award dated 30.04.2015, passed in M.C.O.P.No.449 of 2012, directed the second respondent Insurance Company to pay the Appellant a sum of Rs.20,88,997/- together with interest at the rate of 7.5 % per annum from the date of numbering of claim petition i.e. from 25.01.2012 till the date of realization and also awarded costs.

5.Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned Award, this appeal has been filed by the claimant seeking enhancement of compensation.

6.Heard Mr.R.Bharath Kumar, learned counsel appearing for the Appellant, Mr.P.M.Shahul Hameed, learned counsel appearing for the first respondent and Mr.D.Bhaskaran, learned counsel appearing for the second respondent.

7.The Appellant/claimant has challenged the Award on the ground that the quantum of compensation awarded by the Tribunal is meager and inadequate. It is his case that the Tribunal has erroneously assessed the monthly income of the claimant at a meager sum of Rs.15,000/-. The Appellant is a qualified and practising Chartered Accountant.

8.It is also his case that the Tribunal has not applied the multiplier method considering the grievous nature of the injuries and his avocation but instead has assessed the disability by percentage basis at Rs.2,000/- per percentage of disability. It is also his case that the Tribunal has erroneously reduced the disability assessed by PW2 - a Neuro Surgeon from 60% to 40% without any basis.

9.It is also the case of the Appellant that the Tribunal has committed error in refusing to award any amount towards future medical expenses as claimed under Ex.P23 alleging that Ex.P23 has not been substantiated by the evidence of the author.

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10.The Appellant has also challenged the findings of the Tribunal that the clinical report of the Appellant is not filed by the Doctors and there is no follow up treatment which finding according to the Appellant, is baseless. According to the Appellant, the evidence of PW2 to PW4 would amply prove that the clinical report of assessment is not at all necessary and the assessment of PW2 to PW4 on the basis of Discharge Summaries, inpatient Medical Bills, X-Rays, Scan Reports issued by reputed Hospitals are sufficient to assess the disability.

11.It is also the case of the Appellant that the Tribunal ignored Ex.P13 income tax returns which shows that the claimant was earning more than a sum of Rs.1,00,000/- per month and without considering the same, the Tribunal has erroneously without any basis fixed the monthly income of the Appellant at Rs.15,000/-. The Appellant has also challenged the Award on the ground that the Tribunal has not awarded adequate compensation under the heads loss of amenities, attender charges and pain and suffering. It is also his case that considering the nature of injuries sustained by him and his requirement to go for regular medical treatment, the Tribunal ought to have awarded compensation towards future medical expenses, but has erroneously failed to award the same.

12.This Court has perused and examined the impugned Award as well as the materials and evidence available on record.

13.The Appellant is a qualified Chartered Accountant which has not been disputed by the second respondent Insurance Company before the Tribunal. As a result of the accident, the Appellant sustained head injuries, multiple facial injuries with fractures, commiunted supracondylar fracture right femur, movement restriction and muscle stiffness on right leg.

14.He has taken treatment at Fortis Malar Hospital as inpatient as well as outpatient. Before the Tribunal 27 documents were filed by the Appellant/claimant which were marked as Exs.P1 to P27 and five witnesses were examined on the side of the Appellant namely, PW1 the Appellant himself, PW2 - Dr.Saravana Bhavananantham who examined the Appellant and issued the disability certificate, PW3 -Dr.Saichandran another Doctor who assessed the disability of the Appellant and PW4 - Dr.Kalkura who has also examined the Appellant. On the side of the respondents neither any witness was examined nor any document filed before the Tribunal. The respondents have also not challenged the impugned Award.

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15.The learned counsel for the second respondent would submit that the present medical condition of the Appellant is not alone due to the accident, but also due to his previous medical condition as he was suffering from leukemia even prior to the accident. Therefore, according to him, the Tribunal has rightly assessed the compensation payable to the Appellant under the impugned Award after considering his previous medical illness.

16.Ex.P2-Discharge summary shows that the Appellant sustained head injury with multiple facial injuries with fractures comminuted supracondylar fracture right femure, haemolytic jaundice, and chronic myeloid leukemia and was treated as inpatient from 06.08.2011 to 15.09.2011. The Doctors performed on the Appellant (a) right frontal craniotomy, evacuation of contusion frontal sinus exenteration and carpeting of ACF with base on 08.08.2011, (b) open reduction and internal fixation mandible, maxilla and zygoma on 08.08.2011, (c) open reduction and internal fixation right distal femur with locking plate on 08.08.2011, (d) wound debridement at right thigh on 17.08.2011 and (e) wound debridement at right distal femur on 06.09.2011.

17.Ex.P2 - Discharge summary will clearly reveal that the Appellant has been hospitalized in Fortis Malar Hospital, Chennai immediately after the date of the accident and emergency operations were performed on the Appellant by the Doctors only with regard to the grievous injuries sustained by the Appellant as a result of the accident. Therefore, it cannot be said that the Appellant's previous ailments namely, leukemia played a major contributor for the medical expenses incurred by the Appellant. Infact the major portion of the medical expenses relate only to injuries sustained by the Appellant as a result of the accident.

18.Ex.P3 - Discharge summary shows that the Appellant had taken treatment as inpatient at Helios Hospital on 13.02.2012 were incision and drainage at right thigh was performed on the Appellant.

19.Ex.P4 - Discharge summary shows that the Appellant had taken inpatient treatment at Apollo Hospital from 05.07.2012 to 13.07.2012 where implant removal and debridement and primary closure was done.

20.PW2 - Dr.Saravana Bavananthan has assessed the disability of the Appellant at 60% for the injuries sustained by him and

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deposed that he assessed 10% for post traumatic headache, 10% for post traumatic vertigo, 10% for antiepileptic therapy, 10% for memory deficit and 20% for sensory ataxia.

21.PW3 - Dr.Saichandran has assessed the disability of the Appellant at 35% comminuted supracondylar fracture right femur, and had deposed that at present due to muscle stiffness of the right knee, movement reduced and restricted by 30 degrees using goniometere, the patient developed traumatic oesteo arthritis of the right knee joint causing pain and swelling and restricted activity, lacerated injury at right thigh was cleaned, dead muscles removed and sutured and scar adherence present.

22.PW4 - Dr.Kalkura had deposed that the Appellant is having difficulty in opening the mouth, disfigurement due to muscular dysfunction, due to midline shift, deranged occlusion causing mastigatory dysfunction and mild speech disturbance and the Appellant is having fixed prosthesis for 3 teeth.

23.Despite the disability certificate issued by qualified Doctors, the Tribunal has observed that the injuries sustained by the Appellant are not permanent and schedule injuries and also the avocation of the Appellant will not be affected directly.

24.As seen from the injuries through the discharge summaries issued by the Hospitals as well as the deposition of the Doctors PW2, PW3 and PW4, the injuries sustained by the Appellant are indeed grievous in nature will certainly affect the day to day work as a practicing Chartered Accountant.

25.We are of the considered view that the Tribunal ought to have applied multiplier method while assessing the loss of income instead of assessing compensation on percentage basis. The Tribunal has erroneously calculated the loss of income at Rs.2,000/- per percentage and in all the Tribunal has awarded for 90% disability a sum of Rs.1,80,000/- as the disability compensation to the Appellant which in our considered view is an erroneous assessment and inadequate. As a Chartered Accountant, the Appellant will have to travel to his office as well as to the offices of the Tax Authorities, Tribunals and Courts. The injuries sustained by the Appellant would certainly have hampered his mobility.

26.It is also brought to the notice of this Court by the learned counsel for the Appellant that the Appellant is unable to move out of his house and he is in need of a 24 hour attender for his regular needs. Before the Tribunal, though the Appellant had filed his income tax returns, which was marked as Ex.P13 which may not reveal his real income and his prospects for future income, the Tribunal considering the fact that the

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Appellant is a qualified and practising Chartered Accountant having sufficient years of practise ought not to have fixed the monthly income at a meager sum of Rs.15,000/-.

27.The accident happened in the year 2011 and considering the year of the accident and the Appellant's profession, we are of the considered view that a sum of Rs.25,000/- will have to be assessed as monthly income of the Appellant at the time of the accident and multiplier method will have to be applied for the assessment of the loss of income since the grievous injuries sustained by the Appellant would have certainly hampered his mobility thereby restricting his movements for doing his regular work as a practising Chartered Accountant.

28.We therefore, reject the contention of the Insurance Company that the major factor for the medical and hospital expenses is only due to the Appellant's previous ailments and not due to the injuries sustained by him as a result of the accident.

29.The Tribunal has awarded a sum of Rs.10,000/- towards loss of amenities, Rs.15,000/- towards attender charges and Rs.16,000/- towards loss of income which in our considered view is a meager sum and is not in accordance with the settled principles of law. The Tribunal has also not awarded any compensation to the Appellant towards future medical expenses. It cannot be disputed that the Appellant due to his medical condition as a result of the accident will have to continuously take medical treatment and this fact has not been taken note of by the Tribunal.

30.We accordingly, Award a sum of Rs.4,00,000/- as future medical expenses. However, the said sum of Rs.4,00,000/- shall not carry any interest. We enhance the compensation under the heads pain and suffering from Rs.1,00,000/- to Rs.1,50,000/- towards loss of amenities from Rs.10,000/- to Rs.1,00,000/- and attender charges from Rs.15,000 to Rs.50,000/-. The compensation awarded by the Tribunal in respect of other heads is confirmed.

31.For the foregoing reasons, the impugned Award of the Tribunal is hereby modified in the following manner:

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.60,000	Rs.1,00,000
Transport to Hospital	Rs.25,000	Rs.25,000
Extra nourishment	Rs.20,000	Rs.20,000

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Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Damage to clothing	Rs.500	Rs.500
Medical Expenses	Rs.16,78,497	Rs.16,78,497
Attender charges	Rs.15,000	Rs.50,000
Loss of amenities	Rs.10,000	Rs.1,00,000
Pain and suffering	Rs.1,00,000	Rs.1,50,000
Disability at 90% at Rs.2,000/- per percentage	Rs.1,80,000 (25,000+15%x12x50% x11 multiplier)	Rs.18,97,500
Future medical exp	-	Rs.4,00,000
Total	Rs.20,88,997	Rs.44,21,497

Conclusion:

32.In the result, the appeal is partly allowed by modifying the total compensation from Rs.20,88,997/- to Rs.44,21,497/-. However, the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed but it is made clear that a sum of Rs.4,00,000/- awarded by this Court towards future medical expenses of the Appellant shall not carry any interest. The second respondent Insurance Company is directed to deposit the entire award amount as per this judgment before the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of M.C.O.P.No.449 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the claimant through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

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

+1cc to Mr.D.Bhaskaran, Advocate Sr.83378

C.M.A.No.2783 of 2015

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