

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.71 of 2018

P.G.Lakshmanasiva ... Appellant/Petitioner

Vs

1.S.Karumurugan
(R1 was set exparte in the trial court)
2.The Oriental Insurance Co., Limited,
Third Party Claims Hub, 2nd Floor,
No.216,115, Prakasam Salai,
Broadway, Chennai - 108. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.06.2017 made in M.A.C.T.O.P.No.2484 of 2013 on the file of the II Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : M/s.R.Arun Dattan

For Respondents : Mr.R.Siva Kumar for R2.
R1 - Exparte, before Tribunal

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant aggrieved over the quantum of compensation of Rs.9,96,279/- for 45% disability sustained by him, a 26 years old, Senior Process Executive in Infosys BPO Ltd., earning about Rs.13,910/- per month (after deduction) in the accident occurred on 05.12.2012, when he was riding his Motorcycle from South to North at GST road and was hit down by a private bus belonging to the 1st respondent insured with the 2nd respondent, driven rashly and negligently which came in the opposite direction.

2.Heard Mr.R.Arun Dattan, learned Counsel for the appellant and Mr.R.Siva Kumar, learned Counsel for the 2nd respondent.

3.A perusal of the records would show that the claimant sustained the following injuries viz., Fracture over both hip, Degloving injury over both thigh, Degloving injury over back, Degloving injury over both testis and Multiple injuries all over the body and he underwent Colostomy surgery and a plate has been fixed in the pelvic region as proved by Ex.P.3, Ex.P.4, Ex.P.5 & Ex.P.6 viz., discharge summaries and Ex.P.16 & Ex.P.17 viz., Disability certificates. Though PW2 doctor deposed that since one of the testis is removed and it is inactive, 20% disability has been assessed for total and permanent loss of testis and 25% partial permanent disability for Thrice abdominal surgery, Anterior abdominal wall bulge, Chronic sub acute obstruction, step ladder pattern increase boric sounds, abdominal colicky pain and frequent stools, the tribunal based on Ex.P.15 and Ex.P.16 determined the disability at 20% in consonance with PW2 doctor's evidence.

4.PW3, another doctor opined that Ex.P.18 shows malunited fractures and the mutation of the appellant is restricted and there is a shortening of left lower limb by 5 cm and assessed the disability at 50%. However, the tribunal determined the disability at 25% and therefore, in toto, based on medical records and the evidence of PW2 and PW3, 45% disability has been arrived at rightly by the tribunal and a sum of Rs.3,000/- has been taken per percentage of disability and hence, a sum of Rs.3,000/- X 45 = Rs.1,35,000/- awarded towards disability is confirmed.

5.The tribunal awarded only a sum of Rs.20,000/- towards loss of earning during the treatment period. However, as per Ex.P.11 viz., loss of pay certificate, the appellant was under the treatment from 01.02.2013 to 30.09.2014 and the loss of pay certificate would also disclose that he lost his pay for several months. The tribunal rightly determined the monthly income at Rs.13,910/- after deduction based on Ex.P.10 viz., salary certificate. The appellant has lost his salary for twenty months and hence, he has to be given salary for those twenty months. Hence, the loss of income would be Rs.13,910/- x 20 = Rs.2,78,200/-.

6. The tribunal only awarded a sum of Rs.5,000/- towards transportation. The period of treatment itself is twenty months and therefore, many times the appellant should have visited the hospital and hence, the same is enhanced to Rs.50,000/-. Further, Rs.5,000/- awarded towards Extra Nourishment is low and the same is enhanced to Rs.50,000/- as the appellant had undergone many surgeries, was hospitalized four times and he was under treatment for twenty months. Rs.1,000/- awarded towards Damages to article and Rs.8,08,279/- awarded towards medical expenses are confirmed.

7. Though the learned Counsel for the appellant would strenuously argue that many medical bills were not taken into consideration by the tribunal, a close scrutiny of the records reveal that each and every bill was meticulously and thoroughly analyzed by the tribunal and only genuine bills were taken into consideration and the amount awarded to the tune of Rs.8,08,279/- is appreciable. The approach of the tribunal has to be appreciated as the tribunal has found the genuine bills out of many bills produced by the appellant. Therefore, no enhancement can be made in this regard. Further, it is seen that no amount has been awarded towards mental agony and a sum of Rs.50,000/- is awarded for the same.

8. Rs.2,000/- awarded towards attendant charges is too low as the appellant underwent four surgeries and he was in hospital for a longer period. Hence, Rs.30,000/- is awarded for the same. No amount has been awarded towards Future medical expenses and a sum of Rs.50,000/- is awarded for the same. Some amount has been sought for the loss of marital life and the same cannot be given as the marriage prospects have not been affected, even though there is some evidence with regard to inactive testis.

9. Rs.10,000/- awarded towards loss of amenities is low and the same is enhanced to Rs.25,000/- and a sum of Rs.10,000/- awarded towards pain and sufferings is deleted as this Court has awarded Rs.50,000/- towards mental agony. Since this Court has already awarded towards permanent disability and he has not lost his job, no amount was rightly awarded by the tribunal towards "loss of earning power". Therefore, the sum of Rs.9,96,279/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Disability	1,35,000/-
2.	Loss of income	2,78,200/-
3.	Transportation	50,000/-
4.	Extra nourishment	50,000/-
5.	Damages to articles	1,000/-
6.	Medical expenses	8,08,279/-
7	Mental Agony	50,000/-
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8	Attendant charges	30,000/-
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9	Future Medical expenses	50,000/-
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10.	Loss of Amenities	25,000/-

SI.No	Head	Amount (Rs.)
	Total	14,77,479/-
	Rounded Off	14,80,000/-

10.Hence, the total compensation payable in this case is Rs.14,80,000/-. Though the tribunal has awarded 9% per annum as interest, this Court awards interest at 7.5% per annum. Additional Court-fee, if any, shall be paid by the appellant within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the appellant, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the appellant and thereafter, transfer the remaining award amount to the appellant's account.

11.The 2nd respondent/insurance company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest (except for future medical expenses) and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the amount to the account of the appellant through RTGS within a period of one week.

12. Accordingly, this appeal is partly allowed by enhancing the award of the Tribunal from Rs.9,96,279/- to Rs.14,80,000/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Presiding Judge,
The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

+2cc to M/s.R.Arundattan, Advocate SR.65813
+1cc to Mr.R.Sivakumar, Advocate SR.66009

C.M.A.No.71 of 2018

JP (CO)
CB (05/02/2020)