

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM

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

C.M.A.No.2627 of 2017

S.Paulraj @ Palraj ... Appellant/Petitioner
vs.

1.M.D.Kumar
(Was set exparte in the Trial Court)
2.The Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
Nungambakkam,
Chennai - 600 034. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.01.2017 made in MACT O.P.No.1273 of 2013 on the file of the II Judge, Motor Accident Claims Tribunal, (Court of Small Causes) Chennai .

For Appellant : Mrs.P.T.Saleem Fathima
For Respondent 2 : Mr.S.Arun Kumar
R1 - set exparte

JUDGMENT

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

This appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 24.01.2017 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP.No.1273 of 2013.

Brief facts leading to the filing of this appeal:

2. The Appellant sustained injuries on 13.02.2013 as a result of an accident caused by a lorry bearing registration No.TN23-E-5055 owned by the first respondent and insured with the second respondent. The accident happened when the Appellant/claimant was riding the motorcycle bearing registration No.TN11-A-1730 from South to North direction on the western side of Bharathamatha street, near the junction of GST

Road when the lorry bearing registration No.TN23-E-5055 (insured vehicle) coming from West to East direction, took a right turn towards Bharathamatha Street and dashed against the motor cycle and the Appellant/claimant was thrown out of the vehicle and he sustained grievous injuries.

3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, II Judge of Small Causes, Chennai in MCOP.No.1273 of 2013 against the respondents seeking a compensation of Rs.56,00,000/- for the injuries sustained by him as a result of the accident.

4. The Motor Accident Claims Tribunal by its Award dated 24.01.2017 passed in MCOP.No.1273 of 2013 directed the second respondent to pay the claimant a compensation of Rs.7,57,000/- together with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 02.03.2013 till the date of realisation.

5. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned Award dated 24.01.2017, the claimant who is the Appellant herein has preferred this Appeal seeking enhancement of compensation.

6. Heard Mrs.P.T.Saleem Fathima, learned counsel appearing for the Appellant and Mr.S.Arun Kumar learned counsel appearing for the second respondent. The first respondent has remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with in this Appeal.

Discussion:

7. According to the Appellant/claimant, the compensation awarded by the Tribunal is inadequate. According to him, the Tribunal has erroneously assessed the notional monthly income at Rs.7,000/- and has awarded only a meager sum of Rs.21,000/- towards loss of income as against the claim of Rs.1,92,000/-. It is also the case of the Appellant/claimant that the compensation awarded by the Tribunal towards Transportation, Extra Nourishment and under other heads is inadequate. It is also his case that the Tribunal has not awarded adequate compensation towards attender charges, loss of amenities, and loss of earning capacity. It is also his case that the Tribunal has not awarded any compensation towards loss of marital prospects. It is also his case that the Tribunal ought to have assessed the loss of earning capacity of the Appellant/claimant at 100% as he was completely incapacitated from doing any work due to the accident.

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

9. Before the Tribunal, the claimant has filed 21 documents which were marked as Ex.P1 to Ex.P21 and three

witnesses were examined on his side namely the Appellant/claimant himself (PW1) and two Doctors who examined him as PW2 and PW3. On the side of the respondents, neither any witness was examined nor any document filed, before the Tribunal.

10. The second respondent insurance company has not filed any appeal as against the impugned award and hence, the adverse finding of negligence on the part of the driver of the insured vehicle has attained finality.

11. We need to now examine only as to whether the quantum of compensation awarded by the Tribunal to the Appellant/claimant is a just compensation or it has to be enhanced.

12. The Appellant/claimant has sustained multiple compound and comminuted fracture of thigh bone and below knee in right leg for which external rods were fixed. The Appellant/claimant has also sustained severe internal injury in the face leading to loss of front 4 upper teeth. There was dislocation of Mandible and internal injury in chest and skull. Apart from these injuries, the Appellant/claimant also sustained multiple internal and external injuries all over his body. The injuries sustained by the Appellant/claimant has not been disputed by the second respondent Insurance Company. Disability certificates issued by the Doctors namely PW2 & PW3 who were examined the Appellant/claimant, were marked as Ex.P16 & Ex.P21 respectively. The Tribunal has rightly followed the decision reported in 2007 (2) TNMAC P249, Selvaraj vs. S.Ramesh and National Insurance Company Ltd and assessed the total functional disability of the Appellant/claimant as a result of the injuries at 67% after clubbing two disabilities occasioned in different parts of the body due to the accident. The Tribunal has also after considering the nature of injuries and evidence of PW2 and PW3 (Doctors) assessed the functional disability of the Appellant/claimant at 38%. We do not find any infirmity in the same and therefore, confirm the assessment of disability.

13. The Tribunal has not awarded loss of future prospects to the Appellant/claimant. As per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680, the Appellant/claimant is entitled to 40% towards loss of future prospects. We therefore award the same to the Appellant/claimant.

14. The Appellant/claimant has claimed in his claim petition that he was working as a delivery cum loadman and earning a sum of Rs.7,000/- per month, besides batta at the time of the accident. But he has not filed any documentary evidence to prove the same before the Tribunal. Since there was no documentary evidence to prove the said claim that the Appellant/claimant was earning a sum of Rs.7,000/- per month

besides batta, the Tribunal has fixed the notional monthly income of the Appellant/claimant at Rs.7,000/-. We do not find any infirmity in the said finding and the same is confirmed.

15. Considering the age of the Appellant at the time of the accident being 28 years which is evidenced from the Driving license of the Appellant which was marked as Ex.P10, the Tribunal has rightly adopted 17 multiplier to assess the loss of earning capacity of the Appellant/claimant. We do not find any infirmity in the said finding and the same is confirmed.

16. The injuries sustained by the Appellant/claimant who was a delivery cum loadman, are grievous in nature which has caused permanent disability to him. The Appellant/claimant had sustained multiple compound and comminuted fracture of thigh bone and below knee in right leg for which external rods were fixed. He had also sustained severe internal injury in the face leading to loss of front 4 upper teeth and dislocation of Mandible. He had also sustained internal injury in chest and skull and multiple internal and external injuries all over his body. The Tribunal ought to have awarded compensation to the Appellant/claimant towards loss of marital prospects, but under the impugned Award, it has not been awarded. We therefore, award the same at Rs.25,000/- as loss of marital prospects to the Appellant/claimant.

17. Insofar as the compensation awarded by the Tribunal towards loss of income during the period of treatment, transportation, extra nourishment, motor cycle repairing charges, medical expenses, pain and suffering, attender charges and loss of amenities are concerned, we do not find any infirmity in the quantum of compensation awarded by the Tribunal under those heads and the same is confirmed.

18. For the foregoing reasons, the compensation awarded by the Tribunal to the Appellant/claimant is enhanced from Rs.7,57,000/- to Rs.9,99,030/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Transportation, nourish food and miscellaneous expenditure	50,000/-	50,000/-
Medical expenses	25,000/-	25,000/-
Attender charges	22,000/-	22,000/-
Damages for pain, suffering and Trauma	50,000/-	50,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earning capacity/power	5,42,640/- (7000 x 12 x 17 x 38%)	7,59,696/- (7000+40% = 9800 x 12 x 17 x 38%)
Loss of earning during the period of treatment	21,000/-	21,000/-
Motor Cycle Repairing Charges	21,334/-	21,334/-
Loss of Amenities	25,000/-	25,000/-
Loss of marital prospects	...	25,000/-
Total	7,56,974/-	9,99,030/-
Rounded off to	7,57,000/-	9,99,030/-

Conclusion:

19. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.7,57,000/- to Rs.9,99,030/-. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent insurance company is directed to deposit the entire award amount of Rs.9,99,030/- together with interest at the rate of 7.5% per annum from the date of numbering of claim petition i.e., from 02.03.2013 till the date of realisation and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.1273 of 2013 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/Appellant through RTGS within a period of four weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-)

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Sub Assistant Registrar

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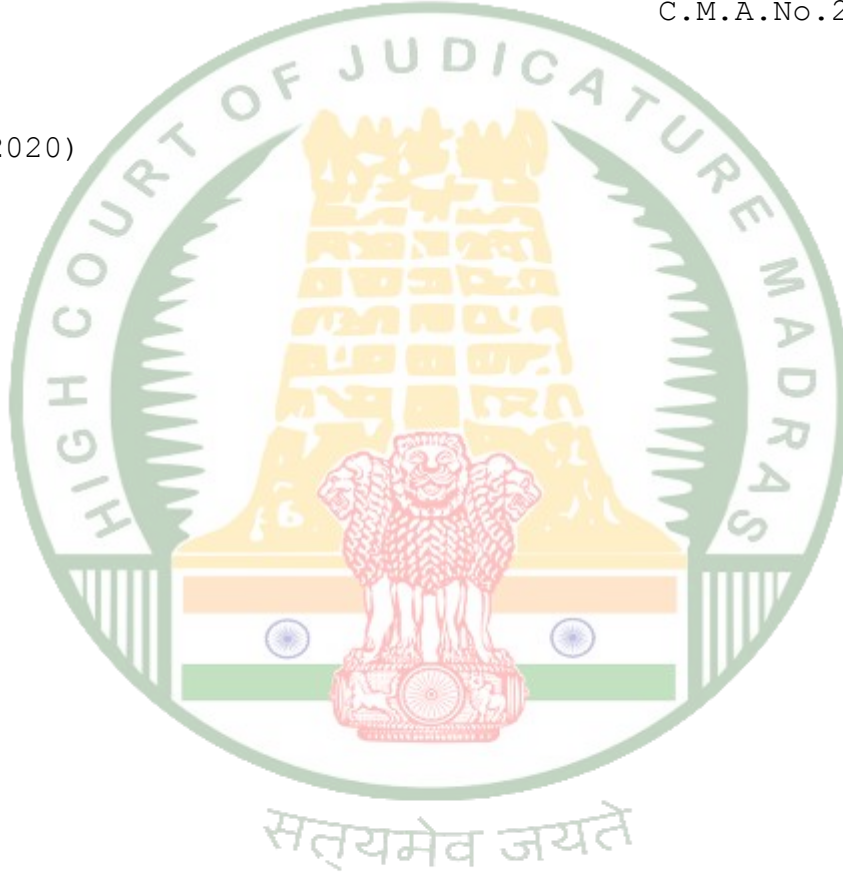
1.The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes, Chennai

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

+lcc to Mr.S.Arunkumar, Advocate, S.R.No. 88320

C.M.A.No.2627 of 2017

AK(CO)
GN(17/08/2020)



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