

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2889 of 2008
and C.M.P.No.16905 of 2019

Manivannan

... Appellant/Claimant

vs.

1.P.Selvakumar

2.United India Insurance Company Ltd.,
Divisional Office,
Dr.Sankaran Road,
Namakkal.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 04.01.2008 in MCOP.No.1618 of 2006, on the file of the Motor Accident Claims Tribunal, Coimbatore.

For Appellant : Mr.I.Abrar Md. Abdullah

For Respondents : Mr.S.Arun kumar -R2
Not ready in notice - R1

JUDGMENT

(This Appeal has been taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation awarded under the impugned Award dated 04.01.2008 passed by the Motor Accident Claims Tribunal, Coimbatore in MCOP.No.1618 of 2006.

Brief facts leading to the filing of this appeal:

2. The Appellant sustained grievous injuries as a result of an accident that took place on 08.02.2006 caused by a car bearing registration No.TN 28 C 1828 owned by the first respondent and insured with the second respondent. The accident happened when the Appellant/claimant was walking on the left

side on the mud road portion, near Nallampalli Pirivu in Palani Road, at about 4.45 P.M., at the time, the car driven by the first respondent came opposite direction, dashed against the appellant. The Appellant/claimant was thrown out of the vehicle and as a result of the same, he sustained grievous injuries.

3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, Coimbatore in MCOP.No.1618 of 2006 against the respondents seeking a compensation of Rs.10,16,000/- for the injuries sustained by him.

4. The Motor Accident Claims Tribunal by its Award dated 04.01.2008 passed in MCOP.No.1618 of 2006 directed the first and second respondents to pay the Appellant a compensation of Rs.2,02,690/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation for the grievous injuries sustained by him as a result of the accident caused by the insured vehicle as follows:

Sl.No.	Heads	Award passed by the Tribunal (Rs.)
1	Pain and suffering	20,000/-
2	Extra Nourishment	2,000/-
3	Attender charge	3,000/-
4	Medical Bill Expenses	1,27,696/-
5	Loss of income for 4 months	16,000/-
6	Loss of income due to permanent disability	34,000/-
	Total	2,02,690/-

5. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned award dated 04.01.2008 passed in MCOP.No.1618 of 2006, this Appeal has been filed by the Appellant/claimant seeking enhancement of compensation.

6. Heard Mr.I.Abrar Md. Abdullah, learned counsel for the Appellant and Mr.S.Arunkumar, learned counsel appearing for the second respondent/Insurance Company. The first respondent has remained ex parte before the Tribunal and hence, the notice to him in this appeal is dispensed with.

Discussion:

7. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has filed this Appeal seeking enhancement of compensation. It is the contention of the appellant/claimant that the compensation awarded by the Tribunal under the award is not a just compensation. According to the appellant, the Tribunal has not taken into consideration the brain injuries sustained by him as a result of the accident caused by the vehicle, insured with the second respondent. According to the appellant, the accident had happened when he was aged about 20 years and as result of the grievous injuries sustained by him even now he is unable to do his normal work. According to the appellant, despite the Tribunal giving a clear findings that the appellant has sustained brain injuries, which has resulted in him not been able to perform his regular work, the Tribunal has erroneously not applied the multiplier method as the appellant has suffered permanent disability.

8. It is also contention of the appellant that the compensation awarded by the Tribunal under various heads are low and it needs to be enhanced. However, it is the contention of the second respondent before this Court is that the compensation awarded by the Tribunal to the appellant is a just compensation and it does not call for any interference by this Court.

9. Before the Tribunal, the Appellant/claimant has filed 15 documents which were marked as Ex.A1 to Ex.A15 and four witnesses were examined on his side viz., the Appellant/claimant himself (PW1) and the employer (PW2) and the doctors, who examined the claimant (PW3 and PW4). On the side of the second respondent, neither any witness was examined nor any document filed before the Tribunal.

10. The case of the appellant is that he was working as a salesman in ASIF Pipe Centre and the nature of work of the appellant is to travel extensively canvassing for the sale of pipes. In his claim petition, he was pleaded that he was withdrawing a salary of Rs.4,000/- per month while working as a sales representative. According to him, after the accident, he was unable to work for four months and he resumed his work only in June 2006 that too only as an office boy as he was unable to perform his usual work as a sales representative due to the injuries sustained by him as a result of the accident. According to the appellant, the employer on humanitarian grounds, offered him employment as an office boy. Accordingly to him, if not for the same, he would not been able to get employment elsewhere. According to the appellant, because of the change of job from sales representative to office boy, the salary has also been reduced by the employer from Rs.4,000/- per month to Rs.2,000/- per month. It is also his case that due to the injuries even on the date of the claim petition, he has been suffering exucially pain both physically and mentally.

11. The appellant has also stated in his claim petition that he sustained grievous injuries on his back head (brain stain injury) and abrasion all over his body. According to him, he was rushed to the Government Hospital, Pollachi, and was given first aid there and thereafter, he was shifted to Government Medical College Hospital, Coimbatore. It is his case that the appellant was treated as an in patient from 08.02.2006 till 15.03.2006 in K.G.Hospital. According to him, despite the best medical treatment, the appellant's left limb has become totally immobilised. It is his case that he is continuously undergoing Physiotheraphy treatmnet for movement of the left limbs and that the appellant has become permanently disabled due to the said accident.

12. Before the Tribunal, as seen from the impugned award, the second respondent/Insurance Company has not let in any oral and documentary evidence to dispute the contention of the appellant. To prove the nature of injuries sustained by him, the appellant has filed the wound certificate - Ex.A5, Ex.A10 - Brain C.T.Scan Report dated 08.02.2006, Ex.A11 - Brain MRI Scan Report dated 08.02.2006, Ex.A12 - Brain C.T.Scan Report dated 13.02.2006, Ex.A13 - Brain MRI. Scan Report dated 11.04.2006, Ex.A14 - Brain C.T.Scan Report dated 04.01.2007 and Ex.A15 - Permenant Disability Certificate, dated 26.12.2007.

13. The accident had happened on 08.02.2006 and therefore, C.T. Scans as well as the MRI. Scans were taken by the appellant immediately, either on the same day or within a reasonable time, after the date of the accident. Therefore, the respective medical reports, which were marked as Ex.A10 to A15, will have to be necessarily believed as no contra evidence has been produced by the second respondent/insurance company to disprove the same. As seen from the Ex.A10 to Ex.A15, it supports the claim of the appellant that he had sustained brain injuries as well as the injuries all over the body, due to the accident caused by the insured vehicle. The Tribunal, however, failed to appreciate the fact that the appellant/claimant having sustained serious brain injuries, caused neuro problems to him, failed to fixed the disability compensation, by applying the multiplier method instead the Tribunal has awarded disability compensation on lumsum basis and fixed the same at a meagre amount of Rs.34,000/-

14. The learned counsel for the appellant has also referred to the decisions of the Hon'ble Supreme Court in the case of Sandeep Khanuja Vs. Atul Dande and other reported in 2017 (3) SCC 351 as well as the another judgment in the case of Raj kumar Vs. Ajay Kumar and others reported in 2011 (1) SCC 345. Referring to those judgments, the learned counsel for the appellant would find out that the Tribunal erred in not applying the multiplier method for calculating the disability compensation to the appellant.

15. This Court has perused and examined the impugned award as well as the materials and evidence available on record before the Tribunal. As seen from the Ex.A10 to Ex.A15, which were marked before the Tribunal, supports the case of the appellant that he had sustained brain injuries as well as the other injuries all over his body. The medical reports, which were marked as Exhibits before the Tribunal have been obtained immediately either on the date of the accident or within few months from the date of the accident. No contra evidence has been produced by the second respondent to disprove the said medical reports, which have been marked as Exhibits. The medical records speaks for themselves. There is no necessity for any oral evidence to support the contents of the medical records as the same has been given by the medical experts in the respective fields of medicine. The contention of the second respondent before this Court is that the oral evidence adduced by the appellant is insufficient for the purpose of application of multiplier method, cannot be accepted by this Court, as the medical reports, which have been marked as Ex.A10 to Ex.A15, speaks themselves, which clearly indicate that the appellant had sustained brain injuries as well as other injuries all over his body. The tribunal, however, has committed in error despite recording fact that the appellant had sustained brain injuries and other injuries all over his body, failed to apply the multiplier method while assessing the compensation payable to the appellant. At the time of the accident, the appellant was 20 years old. The avocation of the appellant at the time of the accident and his contention that he had to do a menial job as an office assistant, thereafter, has also not been disputed by the second respondent through any oral or documentary evidence.

16. It is a fit case for applying a multiplier method while assessing the disability compensation. In view of the facts that the medical records clearly indicates that the appellant had sustained brain injuries and the evidence available on record also would reveal that he will not be in a position to do his regular work as he was doing earlier due to the accident. The Tribunal, ought to have treated the injuries sustained by the appellant as a permanent disability and ought to have applied the multiplier method while assessing the disability compensation. The judgments relied upon by the learned counsel for the appellant referred to supra squarely applied to the facts of the instant case.

17. Insofar as the month income of the appellant is concerned, the Tribunal has fixed the same at Rs.4,000/- for an accident that happened in the year 2006. Before the Tribunal, in his claim petition, the appellant has pleaded that he was earning Rs.4,000/- per month prior to the accident and subsequent to the accident, his salary was reduced to Rs.2000/- per month. Considering the year of the accident i.e. 2006, the

Tribunal has rightly fixed the monthly income of the appellant at Rs.4,000/-. Therefore, there is no scope for interference as regards the assessment of monthly income fixed by the Tribunal. The Tribunal has awarded Rs.20,000/- towards pain and suffering, which in the considered view of this Court, is too low. In view of the nature of injuries sustained by the appellant and it has to be enhanced to Rs.50,000/-. The Tribunal has also awarded Rs.2,000/- towards Extra nourishment expenses and Rs.3,000/- towards attender charges, which will have to be necessarily enhanced to a higher sum. For the reason stated above and the same is enhanced to be Rs.25,000/-, Rs.10,000/- respectively, by this Court. The Tribunal, has awarded a sum of Rs.1,27,696/- as medical expenses which was supported by medical bills marked as exhibits. which is a reasonable sum and the same is confirmed by this Court. However, the Tribunal has not awarded towards transportation and accordingly, this Court is awarded a sum of Rs.10,000/- towards transportation charges to the appellant. The loss of income due to permanent disability of the appellant and in view of the fact that he has been permanently disabled from the accident and he has lost the future earning capacity, applying the multiplier method, the loss of income due to permanent disability of the appellant is enhanced from Rs.34,000/- to Rs.8,64,000/-

18. For the foregoing reasons, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pain and suffering	20,000/-	50,000/-
Extra Nourishment	2,000/-	25,000/-
Attender charge	3,000/-	25,000/-
Medical Bill Expenses	1,27,696/-	1,27,696/-
Loss of income for 4 months	16,000/-	-
Loss of income due to permanent disability	34,000/-	8,64,000/-
Transportation	-	10,000/-
Total	2,02,690/-	11,01,696/-

Conclusion:

20. In the result, the Appeal is allowed by enhancing the award amount from Rs.2,02,690/- to Rs.11,01,696/-. 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.11,01,696/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs after deducting the amount, if any, already deposited, to the credit of MCOP.No.1618 of 2006 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 Appellant/Claimants through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

rli

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District at Sessions Judge,
The Motor Accident Claims Tribunal,
Fast Track Court No.3,
Coimbatore.

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

C.M.A.No.2889 of 2008
and C.M.P.No.16905 of 2019

RSV (CO)
GN (20/11/2020)

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