

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1324 of 2013

Apparsamy

... Appellant/Petitioner

vs.

1.The Hexaware Technologies Ltd.,
No.96, Pantheon road,
Egmore, Chennai.

2.The Branch Manager,
Oriental Insurance Company Ltd.,
Rosy Towers, 3rd Floor,
No.7, Nungambakkam High Road,
Chennai - 600 034.

3.T.S.Mahalingam & Sons

4.S.Reagan Smile

5.S.Behin

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.95 of 2008 dated 31.01.2012 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.II, Tindivanam.

For Appellant

: Mrs.K.Sindhiya
for Mr.R.Prabhakaran

For Respondents 1, 4 & 5: No appearance

For Respondent 2

: Mr.M.Krishnamoorthy

For Respondent 3

: Mr.V.Vijayakumar

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JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 31.01.2012 passed by the Motor Accident Claims Tribunal (Fast Track Court No.II, Tindivanam) in MCOP.No.95 of 2008.

2. Heard Mrs.K.Sindhiya, learned counsel representing Mr.R.Prabhakaran, learned counsel for the Appellant, Mr.M.Krishnamoorthy, learned counsel for the second respondent and Mr.V.Vijayakumar, learned counsel for the third respondent. Despite service of notice on the respondent 4 and 5, there is no representation on their side.

3. The Appellant/claimant sustained injuries as a result of an accident which took place on 24.1.2005 caused by a vehicle owned by the fourth respondent. He preferred a claim before the Motor Accident Claims Tribunal against the respondents on the ground that the first respondent was a previous owner of the vehicle who had sold the vehicle to the third respondent who in turn, has sold the vehicle to the fourth respondent and that the second respondent is the insurer of the said vehicle. It is also their case that the fifth respondent was the driver of the vehicle at the time of the accident.

4. The Tribunal under the impugned award exonerated the first, second and third respondents from any liability and directed the fourth and fifth respondents jointly and severally to pay the Appellant/claimant a sum of Rs.2,13,362/- as compensation together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs in the following manner:

Heads	Award Amount (Rs.)
For fracture injury	10,000/-
For surgical injuries	78,000/-
For medical expenses	1,15,362/-
For conveyance	5,000/-
For pain and suffering	5,000/-
Total	2,13,362/-

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5. The Appellant/claimant has not questioned the exoneration of the liability of the first to third respondents by the Tribunal and is aggrieved only with the quantum of compensation awarded by the Tribunal under the impugned award.

6. Before the Tribunal, the Appellant/claimant has filed 21 documents which were marked as Ex.P1 to Ex.P21 and one witness was examined namely the Appellant/claimant himself as PW1. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

7. The only issue that arises for consideration in this Appeal is whether the Appellant/claimant is entitled for enhancement of compensation or not.

8. The Appellant/claimant has sustained the following injuries namely (a) fracture at humerus with Radial nerve palsy, (b) compound comminuted fracture of bone both left leg (c) loss of upper incisor and (d) grievous injuries all over his body as result of an accident. He was hospitalised for five periods namely (a) from 24.12.2005 to 13.02.2006 as per Ex.P4, discharge summary, (b) from 04.03.2006 to 13.03.2006 as per Ex.P5, discharge summary, (c) from 23.03.2006 to 27.03.2006 as per Ex.P6, (d) from 28.03.2006 to 05.04.2006 as per Ex.P7, discharge summary (e) from 11.01.2011 to 13.01.2011 as per Ex.P18, discharge summary and also underwent surgeries. As seen from the evidence available on record, the respondents have not disputed the nature of injuries sustained by the Appellant/claimant and they have also not disputed the period of hospitalisation. The special commissioner for disabled, chennai has issued a disability certificate in favour of the Appellant/claimant which was marked as Ex.P14 before the Tribunal which discloses that the Appellant/claimant had sustained 70% disability due to the injuries sustained by him as a result of an accident. The photographs of the Appellant/claimant has also been affixed with the said certificate. As seen from the certificate, it is clear that the Appellant/claimant has suffered extensive disability. However, the Tribunal has ignored the disability certificate issued by the Government of Tamil Nadu which was marked as Ex.P14 but instead has awarded compensation to the Appellant/claimant on lumpsum basis i.e., Rs.10,000/- towards fracture injuries sustained by the Appellant/claimant and considering Ex.P4 & Ex.P17, has awarded a sum of Rs.78,000/- as compensation towards surgical injuries sustained by the

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Appellant/claimant. The discharge summaries Ex.P4, Ex.P5, Ex.P6, Ex.P7 & Ex.P18 reveal that for a long period of time, the Appellant/claimant was hospitalised.

9. The nature of injuries sustained by the Appellant/claimant has also not been disputed by the respondents before the Tribunal. As seen from the nature of injuries, the Appellant has indeed sustained grievous injuries and that he may require long period of time to recover. Without any basis, the Tribunal ignored the disability certificate issued by the Government of Tamil Nadu Ex.P14. This court is of the considered view that when the disability certificate has been issued by the Government of Tamil Nadu Ex.P14, the Tribunal ought to have accepted the same or ought to have given sufficient reasons for ignoring the same. Since in the impugned award, no reasons whatsoever has been given by the Tribunal for ignoring Ex.P14 issued by the Government of Tamil Nadu, this Court is constrained to accept the disability certificate issued by the Government of Tamil Ex.P14. This Court therefore, assesses the disability of the Appellant/claimant as per the said certificate at 70%. The year of the accident is 2005. It is settled practice that if the accident is of the year 2005, this Court normally fixes the disability compensation calculated at Rs.2,000/- per percentage of disability. Since the Appellant/claimant has sustained 70% disability, this Court awards a sum of Rs.1,40,000/- towards disability compensation to the Appellant/claimant calculated at Rs.2,000/- per percentage of disability. However, since this Court has awarded a disability compensation of Rs.1,40,000/-, the Appellant/claimant is not entitled for the compensation awarded by the Tribunal towards fracture injuries at Rs.10,000/- and surgical injuries at Rs.78,000/-. Accordingly, Rs.10,000/- towards fracture injuries and Rs.78,000/- towards surgical injuries are rejected by this Court.

10. Insofar as the compensation towards medical expenses awarded by the Tribunal at Rs.1,15,362/- is concerned, the same is supported by medical bills which have been filed by the Appellant/claimant before the Tribunal. The Tribunal has rightly considered the said medical bills and rightly awarded a sum of Rs.1,15,362/- as compensation towards medical expenses to the Appellant/claimant as per Ex.P1, Ex.P19 & Ex.P21 and the same does not call for any interference.

11. As seen from the photographs attached with the disability certificate Ex.P14 as well as the discharge summaries, Ex.P4, Ex.P5, Ex.P6, Ex.P7 & Ex.P18, the nature of

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injuries sustained by the Appellant/claimant are grievous in nature which would have immobilised him for a long period of time. The Appellant/claimant was an agriculturist. In the claim petition, he claimed that he was earning Rs.7,000/- per month at the time of the accident. The Tribunal has not assessed the monthly income of the Appellant/claimant under the impugned award. It is also pleaded in the claim petition filed before the Tribunal, apart from, agriculturist, the Appellant/claimant was doing real estate business. Being an agriculturist and real estate agent, he needs to move from place to place for the nature of his activities. Considering the nature of injuries sustained by the Appellant/claimant, the Tribunal ought to have awarded some amount to the Appellant/claimant towards future medical expenses, even though he had not filed any proof with regard to the same before the Tribunal.

12. MIOT hospital through a certificate dated 10.11.2010 issued to the Appellant/claimant which was marked as Ex.P16 before the Tribunal, has given the estimate of various expenses to be incurred by the Appellant/claimant for the medical treatment which is as follows:

First admission

Surgery - Sequesterectomy, pus to be drained,
external fixator - Rs.45,000/-

After the infection subsides, he will requires

- Bone grafting - Rs.35,000/-

Room rent, food and medicines
extra for 3 weeks - Rs.30,000/-

Rs.1,10,000/-

Similarly, PIMS Hospital, Pondicherry has issued a certificate to the Appellant/claimant advising as follows:

"He needs surgery for which he may incur an
expenditure of about Rs.50,000/- (Rupees Fifty
Thousand Only)"

Eventhough the said certificates were marked before the Tribunal, the Tribunal has not awarded any compensation towards future medical expenses. Taking an average of both the estimates given by the MIOT Hospital as well as PIMS Hospital, this Court assesses the compensation payable to the Appellant/claimant towards future medical expenses at Rs.80,000/-.

13. With regard to the compensation awarded by the Tribunal towards conveyance and pain and suffering at Rs.5,000/- each is concerned, the same is low in the considered view of this Court. After giving due consideration to the nature of injuries

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sustained by the Appellant/claimant, this Court fixes the compensation towards conveyance at Rs.10,000/- and towards pain and suffering at Rs.25,000/-.

14. The Tribunal has failed to award any compensation towards extra nourishment to the Appellant/claimant. A sum of Rs.15,000/- is awarded to the Appellant/claimant towards extra nourishment by this Court.

15. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced by this Court from Rs.2,13,362/- to Rs.3,85,362/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
For fracture injury	10,000/-	---
For surgical injuries	78,000/-	---
For Disability	---	1,40,000/-
For medical expenses	1,15,362/-	1,15,362/-
For conveyance	5,000/-	10,000/-
For pain and suffering	5,000/-	25,000/-
For future medical expenses	---	80,000/-
For extra nourishment	---	15,000/-
Total	2,13,362/-	3,85,362/-

Conclusion:

16. In the result, this appeal is partly allowed by enhancing the compensation from Rs.2,13,362/- to Rs.3,85,362/-. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. The fourth and fifth respondents are jointly and severally directed to deposit the modified award amount together with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.95 of 2008 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

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award amount along with accrued interest lying to the credit of MCOP.No.95 of 2008 to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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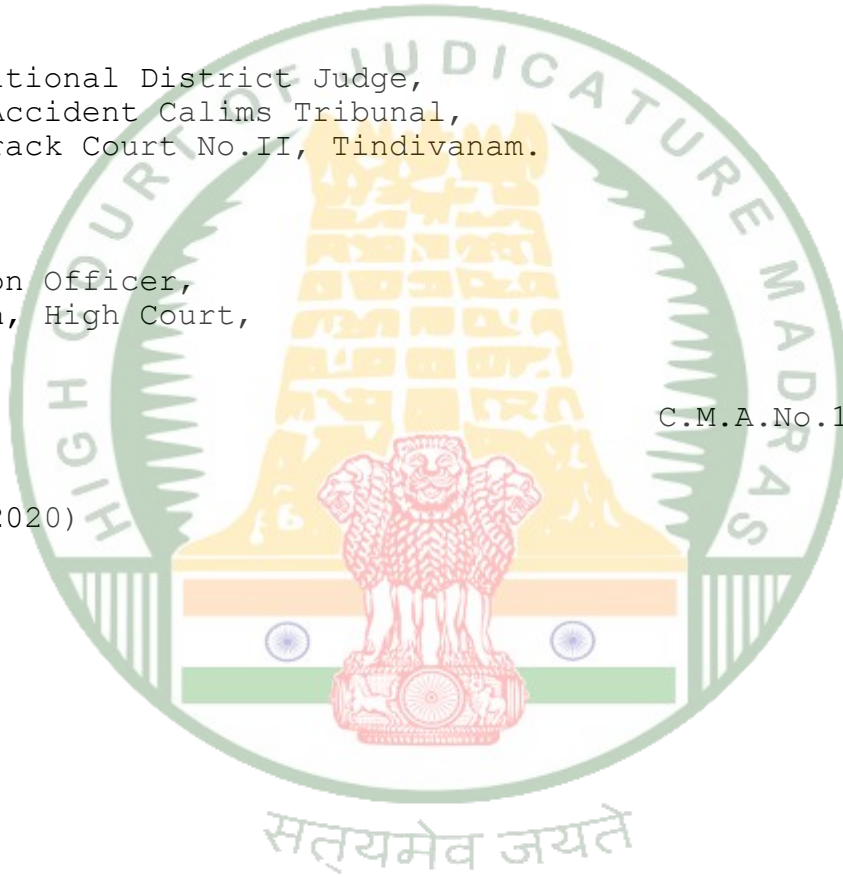
To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.II, Tindivanam.

Copy to:
The Section Officer,
VR Section, High Court,
Chennai.

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