

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED.20.08.2020
CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.2385 of 2012

A.Selvaraj

... Appellant/Claimant

vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Division-II, Chennai - 2.

...Respondent/respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 10.11.2006 in MCOP.No.3426 of 2002 on the file of the Motor Accident Claims Tribunal (IInd Judge, Court of Small Causes) at Chennai.

For Appellant : Ms.Ramya V.Rao

For Respondent : Dr.S.S.Swaminathan

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 10.11.2006 passed by the Motor Accident Claims Tribunal, (IInd Judge, Court of Small Causes, Chennai) in MCOP.No.3426 of 2002.

2. Heard Mrs.Ramya V.Rao, learned counsel for the Appellant and Dr.S.S.Swaminathan, learned counsel for the respondent.

3. The Appellant/claimant sustained injuries as a result of an accident caused by a bus owned by the respondent Transport Corporation and he preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.3426 of 2002.

4. The Motor Accident Claims Tribunal under the impugned award directed the respondent to pay the claimant a sum of Rs.1,60,000/- as compensation together with interest and costs.

5. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal.

6. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of Income during Transport	5,000/-
Extra Nourishment	5,000/-
Pain and suffering	15,000/-
Mental agony to wife and children	50,000/-
Permanent disability	85,000/-
Total	1,60,000/-

7. The Appellant has sustained the following injuries namely (a) loss of left eye vision, (b) fracture of left humerus (c) post traumatic bifrontal zygoma and (d) multiple injuries all over the body, as a result an accident which has not been disputed by the respondent Transport Corporation as seen from the evidence available on record.

8. The Appellant was hospitalised for three periods, namely the first period between 04.01.2000 and 19.01.2000, second period between 19.01.2000 and 03.02.2000 and third period between 01.03.2000 and 03.04.2000. The Appellant/claimant has also filed discharge summaries from the hospital which have been marked as Ex.P1, Ex.P2, Ex.P5 and Ex.P6 to prove that he was hospitalised during the aforementioned periods.

9. Before the Tribunal, the Appellant/claimant has filed twelve documents which were marked as Ex.A1 to Ex.A12 and four witnesses were examined on his side namely, the Appellant/claimant himself as PW1, the Doctors who examined him namely Dr. Gopalan, the Neurologist, Dr.Saichandran, an Orthopaedian, Dr.Rajappa, Eye Specialist as PW2, PW3 & PW4 respectively. On the side of the respondent Transport Corporation, three documents were filed which were marked as Ex.R1 to Ex.R3 and two witnesses were examined on their side before the Tribunal.

10. The Doctor PW2 assessed the disability of the Appellant/claimant in respect of his head at 30%. The Doctor PW3

assessed the disability of the Appellant/claimant with regard to the fracture sustained by him at 55% and the Doctor PW4 assessed the disability of the Appellant/claimant with regard to his eye at 15%. In all put together, the total disability was 85% and the Tribunal has taken the said percentage for the purpose of calculating the disability compensation and awarded Rs.85,000/- towards permanent disability calculated at Rs.1,000/- per percentage of disability for 85% disability which in the considered view of this Court is a correct assessment. Accordingly, the same is confirmed.

11. The Appellant/claimant was an auto driver at the time of the accident. Being an Auto Driver and having sustained grievous injuries and having been hospitalised for a long period of time due to the injuries referred to supra, the Tribunal ought to have awarded loss of earning power by applying multiplier method as rightly contended by the learned counsel for the Appellant. However, for the purpose of adopting multiplier method, the functional disability of the Appellant/claimant has to be necessarily taken into consideration which has not been done so by the Tribunal. The Tribunal has taken the total disability at 85% for assessing the disability compensation. This Court after giving due consideration to the nature of injuries sustained by the Appellant/claimant and after examining the respective disability certificates issued by the Doctors PW2, PW3 and PW4, is of the considered view that the functional disability of the Appellant/claimant as a result of the injuries sustained by him will have to be assessed at 40%. The Appellant/claimant was aged 36 years at the time of the accident which has also not been disputed by the respondent Transport Corporation before the Tribunal as seen from the evidence available on record. Since the Appellant/claimant was 36 year old at the time of the accident, the correct multiplier to be adopted for the purpose of calculating the loss of earning power is 15. Since no documentary evidence was produced by the Appellant/claimant before the Tribunal with regard to his monthly income, the Tribunal has assessed the monthly income of the Appellant at Rs.2,500/- on notional basis after giving due consideration to the year of the accident which happened in the year 2000. This Court is in agreement with the said assessment. As per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC), the Appellant/claimant is entitled for loss of future prospects at 40%. Accordingly, the loss of earning power i.e., payable to the Appellant/claimant is Rs.2,52,000/- as detailed hereunder:

$$(2500 + 40\% = 3500 \times 12 \times 15 \times 40\%)$$

12. Insofar as the compensation awarded by the Tribunal under various other heads namely loss of income during treatment, extra nourishment charges, pain and suffering are concerned, the assessment made by the Tribunal is a correct assessment and it is confirmed by this Court.

13. Insofar as the compensation of Rs.50,000/- towards mental agony to wife and children awarded by the Tribunal is concerned, the Appellant/claimant is not entitled for the same as he has been adequately compensated under the head pain and suffering. Accordingly, the compensation of Rs.50,000/- awarded by the Tribunal towards mental agony to wife and children is removed by this Court.

14. The Tribunal has failed to award any compensation to the Appellant/claimant towards transportation, attender charges, medical expenses and loss of amenities. The Appellant/claimant having sustained grievous injuries and being hospitalised for a long period of time, the Tribunal ought to have necessarily granted compensation towards the aforementioned heads. Accordingly, after giving due consideration to the year of the accident, this Court grants a sum of Rs.5,000/- towards transportation, Rs.5,000/- towards attender charges, Rs.5,000/- towards medical expenses and Rs.10,000/- towards loss of amenities.

15. Eventhough the Appellant/claimant have claimed future medical expenses in this Appeal, he is not entitled for the same, since no documentary evidence has been produced before the Tribunal. Accordingly, the said claim is rejected by this Court.

16. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,60,000/- to Rs.3,87,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income during treatment	5,000/-	5,000/-
Transportation	Nil	5,000/-
Extra Nourishment	5,000/-	5,000/-
Attender Charges	Nil	5,000/-
Medical Expenses	Nil	5,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pain and suffering	15,000/-	15,000/-
Mental agony to wife and children	50,000/-	Removed
Loss of amenities	Nil	10,000/-
Permanent disability at 85%	85,000/-	85,000/-
Loss of future earning capacity	Nil	2,52,000/- (2500 + 40 % = 3500 x 12 x 15 x 40%)
Total	1,60,000/-	3,87,000/-

Conclusion:

17. In the result, this Appeal is partly allowed by enhancing the award amount from Rs.1,60,000/- to Rs.3,87,000/-. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. The respondent Transport Corporation is directed to deposit the modified award amount along 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.3426 of 2002 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 along with accrued interest lying to the credit of MCOP.No.3426 of 2002 to the bank account of the Appellant /claimant within a period of two weeks thereafter. The Appellant is directed to pay requisite court fee if any for the enhanced award amount. No costs.

सत्यमेव जयते

Sd/-

Asst.Registrar (CS II)

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Sub Asst. Registrar

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To

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

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

+1 cc to Mr.S.S.Swaminathan Advocate sr27220

C.M.A.No.2385 of 2012

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