

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.367 of 2011

Sambath

...Appellant/Petitioner

vs.

1.The Managing Director,
Pondicherry Tourism and Transport Development
Corporation Limited, Pondicherry.

2.The Divisional Manager,
National Insurance Co-Ltd.,
Pondicherry. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed by the Motor Accident Claims Tribunal Pondicherry, II Additional District Court in M.A.C.T.O.P.No.279 of 2006 dated 07.10.2010.

For Appellant : Mr.M.Devaraj

For Respondents : Mr.A.R.Nixon for R1

Ms.N.B.Surekha for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 07.10.2010 passed by the Motor Accident Claims Tribunal, II Additional District Judge at Pondicherry in MACT.OP.No.279 of 2006.

2.Heard Mr.M.Devaraj, learned counsel for the Appellant, Mr.A.R.Nixon, learned counsel for the first respondent and Ms.N.B.Surekha, learned counsel for the second respondent.

3.The Appellant/claimant sustained injuries on 01.08.2005 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accident Claims Tribunal, II Additional District Judge at Pondicherry in MACT.OP.No.279

of 2006 against the respondents.

4.The Motor Accident Claims Tribunal under the impugned Award dated 07.10.2010, directed the respondents to pay the Appellant/claimant a sum of Rs.3,10,000/- together with interest and costs as compensation for the injuries sustained by him as a result of the accident.

5.The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award has filed this appeal seeking enhancement.

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

Compensation for 95% permanent disability	
@ Rs.2,000/- per percentage of disability	
- Rs.1,90,000/-	
Compensation for mental agony,	
pain and suffering	- Rs.25,000/-
Towards medical expenses	- Rs.10,000/-
Transport expenses to go to hospital, etc-	Rs.2,000/-
Towards rich and nutritious food	- Rs.2,000/-
Damage to clothes	- Rs.1,000/-
Towards loss of income for three months	- Rs.30,000/-
Towards loss of earning power	- Rs.50,000/-

Total	Rs.3,10,000/-

7.The Appellant/claimant due to the accident was forced to amputate his left hand. He was aged 29 years and was running a vulcanising shop at the time of the accident. In his claim petition, he had admitted that he was earning Rs.5,000/- per month out of his business.

8.Before the Tribunal, the Appellant/claimant has filed 10 documents which were marked as Exs.P1 to P10 and two witnesses were examined on his side namely, the Appellant/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

9.The Doctor who examined the Appellant/claimant (PW2) has issued the disability certificate which has been marked as Ex.P10 which discloses that the Appellant/claimant has sustained 95% disability. The Tribunal under the impugned Award has awarded a sum of Rs.1,90,000/- towards 95% disability suffered by the Appellant/claimant calculated at the rate of Rs.2,000/- per percentage of disability.

10.The grievance of the Appellant /claimant in this appeal is that since the left hand of the Appellant/claimant was amputated, the Tribunal ought to have applied the multiplier method and ought not to have assessed the disability compensation on percentage basis.

11.The nature of injuries sustained by the Appellant/claimant has not been disputed by the respondents as seen from the evidence available on record before the Tribunal. Admittedly, when the left hand of the Appellant/claimant has been amputated due to the accident, the Tribunal ought to have considered the grievous nature of the injuries which would have resulted in the Appellant/claimant unable to do his regular work in running the vulcanising shop and ought to have applied the multiplier method in assessing the disability compensation. However, erroneously without appreciating the evidence available on record the Tribunal has awarded the disability compensation to the Appellant/claimant on percentage basis. Therefore, this Court is of the considered view that the disability compensation payable to the Appellant/claimant has to be assessed by applying the multiplier method.

12.The Tribunal without any basis and without any supporting documentary evidence has erroneously assessed the notional monthly income of the Appellant/claimant at Rs.10,000/-. In the claim petition, the Appellant/claimant has himself claimed that he was earning only Rs.5,000/- per month. While that being so, the Tribunal ought not to have assessed the monthly notional income of the Appellant/claimant at a higher sum of Rs.10,000/-

13.Admittedly, the date of the accident is 01.08.2005. Considering the year of the accident and when no supporting evidence has been placed by the Appellant/claimant before the Tribunal, the Tribunal ought not to have assessed the notional monthly income of the Appellant/claimant at Rs.10,000/-.

14.The year of the accident is 2005. It is settled practice that when there is no evidence for assessment of a higher sum, the notional monthly income fixed by the Courts generally for the year 2005 is Rs.3,000/-. Accordingly, this Court fixes the notional monthly income of the Appellant/claimant at Rs.3,000/- instead of Rs.10,000/- fixed by the Tribunal.

15.Even though, the disability certificate issued by the Doctor (Ex.P10) reveals that the Appellant/claimant has suffered 95% disability, the Tribunal ought not to have accepted the same in totality. As per the schedule mentioned in the Workmen Compensation's Act for amputation of hand, the disability fixed is only 80%. Therefore, the Tribunal has erroneously fixed the disability of the Appellant/claimant at 95% based on Ex.P10 (disability certificate). Instead it should have applied the schedule mentioned in the Workmen Compensation Act and fixed the disability of the Appellant/claimant at 80%. Accordingly, this Court assesses the disability of the Appellant/claimant at 80%.

16. In view of the above, the disability compensation awarded by the Tribunal is enhanced to Rs.4,89,600/- from Rs.1,90,000/- by applying the multiplier method. The disability taken by this Court is 80% and notional monthly income of the Appellant/claimant is fixed at Rs.3,000/-.

17. With regard to the quantum of compensation awarded to the Appellant/claimant under the heads (a) pain and suffering, (b) transportation, (c) extra nourishment are concerned, the same is low and it has to be enhanced to Rs.30,000/-, Rs.10,000/- and Rs.10,000/- respectively. Insofar as the compensation awarded by the Tribunal towards medical expenses and damage to clothing are concerned, the same is a just compensation as it is supported by sufficient evidence and the said finding is confirmed by this Court. Since this Court has applied the multiplier method for assessing the disability compensation, the loss of income during the period of treatment (3 months) assessed by the Tribunal at Rs.30,000/- is deleted.

18. Having sustained amputation of his left hand, the Tribunal ought to have awarded the Appellant/claimant compensation towards loss of amenities and attender charges which it has failed to do so under the impugned Award. This Court, therefore, awards Rs.25,000/- each towards attender charges and loss of amenities to the Appellant/claimant.

19. The Tribunal has erroneously in paragraph No.17 of the impugned Award has awarded pay and recovery rights to the second respondent by total non-application of mind despite giving a clear finding in paragraph No.11 of the impugned Award that the driver of the insured vehicle was in possession of a valid driving license. Paragraph No.11 of the impugned Award reads as follows:

"11. The petitioner has produced Ex.P3, the insurance certificate of the first respondent's vehicle. A perusal of Ex.P3 would show that the insurance for the first respondent's vehicle is valid from 21.9.2004 to 20.9.2005. Though the petitioner has not produced the driving license of driver of first respondent's vehicle, a perusal of Ex.P8 Accident Inspection Report would reveal that the driver of the first respondent's vehicle has produced his driving license before the Motor Vehicle Inspector, which is valid upto 27.11.2006. Ex.P3 and Ex.P8 would show that the driver of the first respondent possessed valid driving license at the time of the accident and that the vehicle was duly insured with the second respondent."

20. The operative portion of impugned Award cannot go contrary to the findings based on evidence available on record. This being the case, the Tribunal ought not to have granted pay and recovery rights to the second respondent. In such circumstances, the direction given by the Tribunal in

paragraph No.17 of the impugned Award granting pay and recovery rights to the second respondent Insurance Company is hereby set aside.

21.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,10,000/- to Rs.5,99,600 (rounded off Rs.6,00,000/-) by this Court in the following manner:

Loss of earning power and disability	-	Rs.4,89,600/-
3000 x 80 x 100 x 12 x 17		
Pain and suffering	-	Rs.30,000/-
Medical expenses	-	Rs.10,000/-
Transportation	-	Rs.10,000/-
Extra nourishment	-	Rs.9,000/-
Damage to clothes	-	Rs.1,000/-
Attender charges	-	Rs.25,000/-
Loss of Amenities	-	Rs.25,000/-

Total		Rs.5,99,600/-

Rounded off		Rs.6,00,000/-

22.In the result, the appeal is partly allowed. The first respondent is directed to deposit the modified award amount of Rs.6,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited if any, to the credit of MACT.OP.No.279 of 2006, on the file of the Motor Accident Claims Tribunal, II Additional District Judge at Pondicherry, 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 directly to the bank account of the appellant / claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellant before receiving the copy of this Judgment. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Pondicherry.

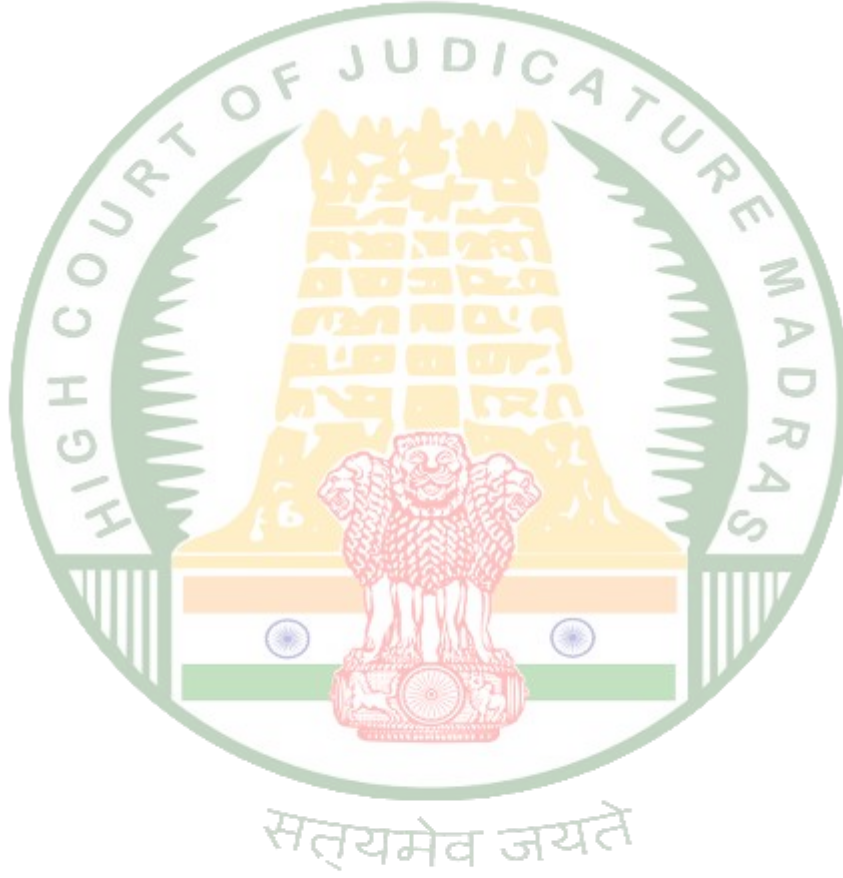
<https://hcservices.ecourts.gov.in/hcservices/>

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.M.Devaraj, Advocate SR.No.26904

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MG (CO)
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