

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3181 OF 2013

S.Muniyandi @ Stephen Muniyandi ... Appellant/Petitioner

vs.

1. WG COR S.Sukumar

2. HDFC CHUBB General Insurance Co. Ltd.,
Raheja Towers, No.177, Anna Salai,
Chennai-2.

...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.06.2012 in MCOP.No.1732 of 2007 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes) Chennai.

For Appellant : Mr.P.D.Selvaraj

For 2nd Respondent : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

1st Respondent : Vacated

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 29.06.2012 passed by the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai in MCOP.No.1732 of 2007.

2. The appellant/claimant sustained injuries on 22.07.2005 as a result of an accident caused by a car bearing Registration No.TN 22 AH 8941 owned by the first respondent and insured with the second respondent. The appellant/claimant sustained fracture of right side hip and other injuries all over his body as a result of the aforesaid accident.

3. The appellant/claimant has preferred a claim before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai in MCOP.No.1732 of 2007 seeking compensation for the injuries sustained by him against the respondents.

4. The Motor Accident Claims Tribunal, under the impugned award, directed the respondents to pay a compensation of Rs.1,66,183/- together with interest and costs to the appellant/claimant as detailed hereunder:

Head	Award passed by the Tribunal (Rs.)
Loss of earning	13,500/-
Transportation	5,000/-
Extra nourishment	5,000/-
Damage to clothes	500/-
Medical expenses	22,183/-
Future medical expenses	5,000/-
Pain and suffering	25,000/-
Permanent disability	90,000/-
Total	1,66,183/-

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. Heard Mr.P.D.Selvaraj, learned counsel for the Appellant/claimant and Mr.E.Rajadurai, learned counsel for the Second respondent/Insurance Company.

7. The adverse finding of negligence on the part of the driver of the insured vehicle has now attained finality, since no appeal has been filed by the respondents against the said finding. The only question that arises for consideration in this appeal is whether the appellant/claimant is entitled for enhancement of compensation or not.

8. The appellant/claimant was aged 33 years and was employed as a driver in SSN (CE), Old Mahabalipuram Road, Kalavakkam, Thiruporur, Kanchipuram District, at the time of the accident. Since no documentary evidence was produced by the appellant/claimant to prove his employment with the said private concern, the Tribunal has assessed the notional monthly income of the appellant/claimant at Rs.4,500/- after giving due consideration to the year of the accident. This Court is in agreement with the said assessment of the Tribunal.

9. Before the Tribunal, the claimants have filed 11 documents, which were marked as Ex.P1 to Ex.P11 and two witnesses were examined on his side viz., the appellant/claimant himself (PW1), the Doctor, who examined him as PW2. On the side of the respondents, neither any witness was examined nor any document filed.

10. The Doctor (PW2) has assessed the partial permanent disability of the appellant/claimant at 45%. The appellant/claimant was hospitalised from 22.07.2005 to 26.07.2005 and he has also taken out-patient treatment between 27.07.2005 to 26.01.2006. Before the Tribunal, the Doctor (PW2) has also deposed that due to the injuries, the right leg of the appellant/claimant has been shortened by one inch. Having sustained fracture of the hip, which is a major injury, it would have taken considerable amount of time for the appellant/claimant to get healed. As a driver, the appellant/claimant would have been unable to work and do his regular duty for a long period of time because of the grievous injuries sustained by him as a result of an accident. However, the Tribunal has failed to take note of these fact and has assessed the disability compensation only on percentage basis. The Tribunal ought to have adopted the multiplier method in assessing the disability compensation to the appellant/claimant. The Doctor (PW2) has assessed the partial permanent disability of the appellant/claimant at 45% . The said assessment, however, cannot be taken for assessing the loss of earning capacity of the claimant adopting the multiplier method.

11. This Court, after having given due consideration to the nature of injuries sustained by the appellant/claimants, as seen from the disability certificate (Ex.P11) and discharge summary (Ex.P2) and other medical records, which have been marked as Exhibits, as well as the deposition of PW2 - Doctor, is of the considered view that the whole body disability (functional disability) of the appellant/claimant will have to be assessed at 50%.

12. The appellant/claimant was aged 33 years at the time of the accident which has also not been disputed by the respondents before the Tribunal. Considering the age of the appellant/claimant, '16' multiplier is adopted for assessing the loss of earning capacity. Accordingly, the disability compensation is assessed by this Court at Rs.1,29,600/- instead of Rs.90,000/- assessed by the Tribunal under the impugned award.

13. The Tribunal, under the impugned award, has awarded Rs.13,500/- (Rs.4,500/- X 3months) towards loss of income to the appellant/claimant during the period of his treatment, which is low in the considered view of this Court. As observed earlier, the appellant/claimant has sustained grievous hip injuries which should have made him immobile for long period of time. The Tribunal has failed to take note of these facts . It ought to have granted a higher compensation towards loss of income during the period of his treatment. This Court, after considering the materials and evidence available on record, is of the view that a sum of Rs.27,000/- (Rs.4,500X6 months) will be an adequate compensation to the appellant/claimant during the period of his treatment, calculated for a period of six months at Rs.4,500/- per month. Accordingly, a compensation towards loss of income during the period of treatment as assessed by this Court is Rs.27,000/-.

14. Insofar as the compensation awarded by the Tribunal towards transportation, extra nourishment, medical bills and pain and suffering are concerned, the same is a just compensation and does not call for any interference by this Court. However, the Tribunal has awarded only a sum of Rs.500/- towards damage to clothing, which is enhanced by this court to Rs.1000/- as per the settled practice. The Tribunal has also awarded only a sum of Rs.5,000/- towards future medical expenses for the appellant. As observed earlier, the appellant/claimant has sustained grievous hip injuries and therefore, the Tribunal ought to have awarded a higher compensation towards future medical expenses considering the fact that the appellant/claimant will be incurring huge sum towards future medical expenses. Accordingly, this Court enhances the compensation towards future medical expenses to the appellant/ claimant from Rs.5,000/- to Rs.20,000/-.

15. The Tribunal has also failed to award any compensation towards attender charges and loss of amenities, which the appellant/claimant is legally entitled to as per the settled position of law. Accordingly, this Court fixes the same at Rs.5,000/- and Rs.15,000/- respectively.

16. For the foregoing reasons, the compensation awarded by the tribunal under the impugned award to the appellants/claimants is enhanced from Rs.1,66,183/- to Rs.2,54,783/- in the following manner:

Heads	Award passed by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	13,500/-	27,000/-
Transportation	5,000/-	5,000/-
Nourishment	5,000/-	5,000/-
Damages	500/-	1,000/-
Medical Bills	22,183/-	22,183/-
Future Medical bills	5,000/-	20,000/-
Pain and suffering	25,000/-	25,000/-
Disability	90,000/-	1,29,600/-
Attender charges		5,000/-
Loss of amenities		15,000/-
Total	1,66,183/-	2,54,783/-

Conclusion:

17. In the result, the appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent insurance Company is directed to deposit the modified award amount i.e, Rs.2,54,783/- along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.1732 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment.

18. On such deposit being made, the Tribunal is directed to transfer to the bank account of the Appellant/claimant as per the order of this Court through RTGS within a period of four weeks thereafter.

19. The claimant/appellant has to pay the required court fee, if any, for the enhanced compensation amount awarded by this Court. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Motor Accident Claims Tribunal
VI Court of Small Causes, Chennai.
2. The Section Officer,
VR Section, High Court,
Chennai.

C.M.A.No.3181 of 2013

SAI (CO)
CS/06/01/2021



WEB COPY