

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.951 of 2013

K.Sampath Kumar ... Appellant/Claimant

Versus

The Managing Director,
Pallavan Transport Corporation,
Pallavan House,
Pallavan Salai,
Chennai - 600 002. Respondent/Respondent

Pzrayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 01.12.2005 made in MCOP No.2278 of 2001 on the file of the Court of Fast Track Court (V Court), Chennai.

For Appellant : Ms.Saleem Fathima
for
Mr.R.Manoranjitham
For Respondent : Mr.S.Sivakumar

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 01.12.2005 passed by the Motor Accidents Claims Tribunal (Fast Track Court - V), Chennai in MCOP No.2278 of 2001.

2. The appellant / claimant sustained injuries on 05.11.2000 as a result of an accident caused by a bus owned by the respondent / Transport Corporation. He preferred a claim before the Motor Accidents Claims Tribunal (Fast Track Court - V), Chennai seeking compensation of Rs.2,00,000/-

3. The Motor Accidents Claims Tribunal (Fast Track Court - V), Chennai by its award dated 01.12.2005 directed the respondent / Transport Corporation to pay the appellant / claimant a sum of Rs.55,000/- together with interests and costs.

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

Heads	Amount awarded by the Tribunal (Rs.)
Pain and sufferings	25,000
Transport, extra nourishment and Attender charges	15,000
Loss of amenities	10,000
Loss of earning during treatment period	5,000
Total	55,000

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

6. Heard Ms. Saleem Fathima, learned counsel for the appellant and Mr.S.Sivakumar, learned counsel for the respondent / Transport Corporation.

7. This Court has perused the materials and evidence available on record before the Tribunal.

8. The adverse finding of negligence on the part of the driver of the bus owned by the respondent / Transport Corporation has now become final, since no appeal has been filed by the respondent / Transport Corporation. The only question that needs to be considered by this Court is whether the appellant / claimant is entitled for enhancement of compensation.

9. The details of the injury sustained by the appellant are as follows :

- Fracture of both bone in Right forearm m/d 1/3
- Fracture shaft of Femur right leg
- Compound Fracture of 1 ML bone left hand and de glouring injury in left palm exposing bones.

10. Before the Tribunal, the appellant / claimant has filed four documents, which were marked as Ex.P1 to P4 and two witnesses were examined viz., the appellant himself as PW1 and the Doctor, who examined him as PW2. The Doctor (PW2) has issued the disability certificate Ex.P3, which reveals that the appellant / claimant has sustained 85% disability. X-ray (Ex.P4) and the discharge summary (Ex.P2) were also marked. No contra evidence has been produced by the respondent / Transport Corporation to disprove the nature of injuries sustained by the appellant / claimant.

11. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant is of the view that the compensation awarded by the Tribunal is low and it has to be necessarily enhanced. The Tribunal has awarded a consolidated sum of Rs.15,000/- towards transportation, extra nourishment and attender charges instead of awarding it under separate heads and also awarding a higher sum under the respective heads. This Court assesses the compensation payable to the appellant towards attender charges at Rs.6,000/-; transportation at Rs.5,000/- and extra nourishment at Rs.5,000/- instead of Rs.15,000/- awarded by the Tribunal under those heads on a consolidated basis.

12. The Tribunal has not awarded any separate disability compensation to the appellant based on the disability certificate (Ex.P3), which reveals that the appellant had sustained 85% partial and permanent disability. After giving due consideration to the nature of injuries sustained by the appellant, this Court fixes the disability compensation at Rs.60,000/-.

13. The Tribunal has also awarded only a meagre sum of Rs.5,000/- on notional basis as compensation towards loss of earning during the treatment period, which is enhanced to Rs.18,000/- by this Court, since the Appellant/claimant sustained grievous injuries and was hospitalised for twenty days and thereafter took outpatient treatment also.

14. However, in the considered view of this Court, the compensation awarded by the Tribunal towards pain and suffering at Rs.25,000/- is on the higher side and it is disproportionate to the compensation awarded under various other heads and therefore, the same will have to be reduced to Rs.20,000/- by this Court.

15. The Tribunal has also not awarded any compensation towards damage to clothing which the appellant is legally entitled to and the same is fixed at Rs.1,000/- by this Court.

16. The nature of the injuries sustained by the appellant does not deserve any payment of compensation towards loss of amenities. However, the Tribunal awarded Rs.10,000/- as compensation towards loss of amenities and since it is an erroneous assessment, the same is set aside by this Court.

17. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pain and sufferings	25,000	20,000
Transport, extra nourishment and Attender charges	15,000	- Rejected
Loss of amenities	10,000	- Rejected
Loss of earning during treatment period	5,000	18,000
Disability	-	60,000
Attender charges	-	6,000
Transport	-	5,000
Extra nourishment	-	5,000
Damages	-	1,000
Total	55,000	1,15,000

18. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.55,000/- to Rs.1,15,000/- as indicated above. No costs.

19. It is settled practice adopted by the Tribunal all over the State of Tamilnadu that 7.5% p.a. is awarded as interest. In the impugned award, the Tribunal has awarded 9% as interest. Thus, the interest awarded by the Tribunal is reduced from 9% to 7.5%, as per settled practice. However, the learned counsel for the appellant submits that the respondent / Transport Corporation pursuant to the impugned award has deposited the entire award amount before the Tribunal and the same has already been withdrawn by the appellant. In such circumstances, no useful purpose would be served if the interest awarded by the Tribunal is modified by this Court at this stage after a lapse of 19 years. Accordingly, in view of the settled practice, the respondent / Transport Corporation is directed to deposit the enhanced amount as assessed by this Court together with interest

at 7.5% from the date of the claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.2278 of 2001, on the file of the Motor Accidents Claims Tribunal, (Fast Track Court - V), Chennai, 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 has to be paid by the appellant before receiving the copy of this Judgment.

20. It is also submitted by the learned counsel for the respondent/ Transport Corporation that there was a delay on the part of the appellant to file this appeal and therefore, it is made clear that the appellant is not entitled for any interest for the said delay period.

Sd/-
Assistant Registrar (CS I)

/true copy/
Sub Asst. Registrar

vsi2
To

1.The Motor Accidents Claims Tribunal/The Judge,
(Fast Track Court -V)
Chennai.

Copy to:
The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

+1 cc to Mr.R.Manoranjitham Advocate sr26261

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