

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.08.2020
CORAM:
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.No.1854 of 2014

P.Ashok Kumar

...Appellant/Claimant

vs.

1.The Managing Director,MTC,
Pallavan House, Pallavan Road,
Chennai - 600 002.

2.The New India Assurance Company Ltd.,
Chennai - 600 002.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 20.12.2013 made in M.C.O.P.No.275 of 2012 on the file of Motor Accident Claims Tribunal (III Addl. District Judge) Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : Mr.S.Siva Kumar for R1
Mr.Dhachanamoorthy 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 20.12.2013 passed by the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee in M.C.O.P.No.275 of 2012.

2.Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellant, Mr.S.Siva Kumar, learned counsel for the first respondent and Mr.Dhachanamoorthy, learned counsel for the second respondent.

3.The Appellant/claimant sustained injuries on 18.02.2012 as a result of an accident caused by a bus owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accident Claims Tribunal against the respondents seeking compensation for the injuries sustained by him as a result of the accident.

4.The Motor Accident Claims Tribunal under the impugned Award passed in M.C.O.P.No.275 of 2012 directed the respondents to pay the Appellant jointly and severally a

compensation of Rs.1,69,198/- together with interest and cost.

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

Permanent Disability 40%	-	Rs.80,000/-
(40 x Rs.2,000)		
Medical expenses	-	Rs.49,198/-
Pain and suffering, extra nourishment and transportation	-	Rs.40,000/-

Total		Rs.1,69,198/-

6.The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award has preferred this appeal. According to him, the compensation awarded by the Tribunal is not a just compensation and it has to be enhanced.

7.This Court has perused the materials and evidence available on record and has also examined the impugned Award.

8.Before the Tribunal, the Appellant/claimant has filed 7 documents which were marked as Exs.A1 to A7 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 witness was examined nor any document filed before the Tribunal.

9.The Appellant/claimant has sustained the following grievous injuries as a result of the accident:

- (a) Accipital Bone Fracture
- (b) Head injury
- (c) Right Temporal Bone fracture
- (d) Right Temporal fronto hemorrhagic contusion
- (e) Right Tentorial Bleed

10.The Doctor who examined the Appellant (PW2) has assessed the disability of the Appellant at 40%. The nature of injuries sustained by the Appellant/claimant as indicated supra has also not been disputed by the respondents as seen from the evidence available on record. The Tribunal has awarded a sum of Rs.80,000/- as disability compensation to the Appellant/claimant for the 40% disability suffered by him calculated at Rs.2,000/- per percentage of disability. The accident happened in the year 2012. Therefore, the compensation awarded by the Tribunal calculated at Rs.2,000/- per percentage of disability is low in the considered view of this Court.

11.It is settled practice that for an accident of the year 2012, the disability compensation is calculated at Rs.3,000/- per percentage of disability. In view of the settled practice, the disability compensation awarded to the Appellant/claimant is enhanced to Rs.1,20,000/- for the 40% disability calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability assessed by the Tribunal.

12.Insofar as the compensation awarded to the medical bills at Rs.49,198/- by the Tribunal is concerned, the said assessment is incorrect. This Court has examined the medical bills filed by the Appellant before the Tribunal which has been marked as Ex.B4. As seen from the medical bills, a consolidated amount payable by the Appellant after deduction of the sum of Rs.1,00,000/- paid by Star Health and Allied Insurance Company Limited, has paid Rs.1,82,100/- towards medical bills raised by the Hospital. Therefore, the said amount has to be necessarily reimbursed to the Appellant/claimant by way of compensation. However, the Tribunal has erroneously awarded only a sum of Rs.49,198/- towards reimbursement of medical bills to the Appellant/claimant instead of Rs.1,82,100/- as seen from the consolidated inpatient bills paid by the Appellant/claimant to the hospitals which amounts to Rs.1,82,100/-. Accordingly, the compensation towards medical bills is enhanced from Rs.49,198 to Rs.1,82,100/- by this Court.

13.Insofar as the compensation awarded by the Tribunal under the heads pain and suffering, extra nourishment and transportation which has been given by the Tribunal on consolidated basis at Rs.40,000/- is concerned, this Court is of the view that even though the consolidated assessment under the said heads is a just assessment, as per settled practice, the said compensation will have to be given under separate heads i.e., Rs.20,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment and Rs.10,000/- towards transportation.

14.The Tribunal has erroneously failed to Award any compensation towards attender charges, loss of amenities and loss of income despite the fact that the Appellant/claimant had suffered grievous injuries and was hospitalized for a long period of time and was also taking outpatient treatment for a number of days. The Appellant/claimant was working as a conductor in a bus owned by the first respondent Transport Corporation. Due to the accident and having sustained grievous injuries he would have been unable to rejoin duty as conductor for a long period of time. However, being a Government servant, he cannot claim compensation under the head towards loss of income for the entire period of his absence since no sufficient evidence has been produced by the Appellant/claimant to

substantiate his claim for loss of income during the period of his treatment, this Court fixes the same on lump sum basis. Accordingly, a sum of Rs.20,000/- is fixed by this Court as loss of income suffered by the Appellant/claimant during the period of his treatment.

15.Insofar as the attender charges and loss of amenities are concerned which have not been awarded by the Tribunal, which he has legally entitled to in view of the nature of injuries sustained by him, this Court Awards a sum of Rs.10,000/- to the Appellant/claimant towards attender charges and another sum of Rs.10,000/- to the Appellant claimant towards loss of amenities.

16.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,69,198 to Rs.3,82,100/- in the following manner:

Permanent Disability 40%	-	Rs.1,20,000/-
(40 x Rs.3,000)		
Medical expenses	-	Rs.1,82,100/-
Pain and suffering	-	Rs.20,000/-
Extra nourishment	-	Rs.10,000/-
Transportation	-	Rs.10,000/-
Attender charges	-	Rs.10,000/-
Loss of Amenities	-	Rs.10,000/-
Loss of income	-	Rs.20,000/-

Total		Rs.3,82,100/-

17.In the result, the appeal is partly allowed. The respondents1 and 2 jointly and severally are directed to deposit the modified award amount of Rs.3,82,100/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.275 of 2012, on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Poonamallee, 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/-

Asst.Registrar (CCC)

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Sub Asst. Registrar

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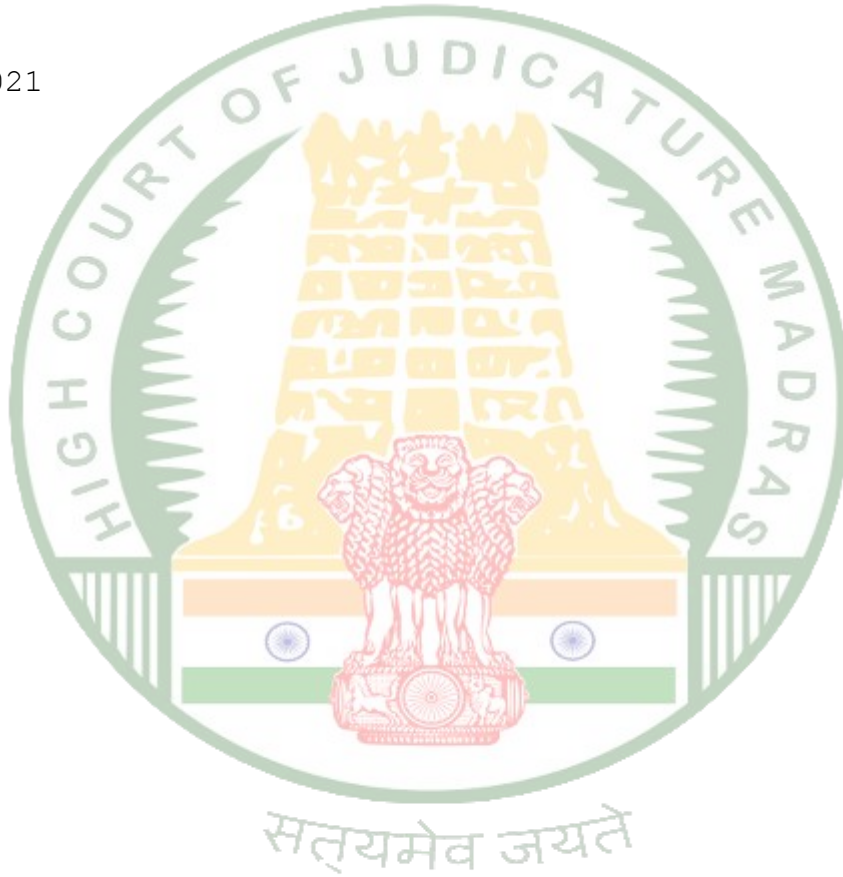
To

1.The Motor Accident Claims Tribunal,
(III Additional District Judge) Poonamallee.

+1 cc to Mr.K.Varadha Kamaraj Advocate sr27963

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