

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.356 of 2014

E.Mani ...Appellant/Claimant
vs.

1.V.Kathirvelu
(1st respondent remained ex-parte)

2.National Insurance Co. Ltd.,
Madras Division IV,
No.169, Mount Road,
Chennai-600 002. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.01.2013 made in MACT.OP.No.1709 of 2011, on the file of Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant : Mr.R.Kalai Arasan
For Respondents : R1 - Exparte
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 28.01.2013 passed by the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai in MCOP.No.1709 of 2011.

2.Heard Mr.R.Kalai Arasan, learned counsel for the Appellant and Ms.N.B.Surekha, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The Appellant/claimant sustained grievous injuries on 16.04.2011 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 in MCOP.No.1709 of 2011 seeking enhancement of compensation for the grievous injuries sustained by him as a result of the accident.

4.The Tribunal under the impugned Award has directed the second respondent Insurance Company to pay the

Appellant/claimant a compensation of Rs.1,96,200/- together with interest and cost.

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

Loss of income for four months at the rate of Rs.4,500/- p.m.	-	Rs.18,000/-
Transportation	-	Rs.5,000/-
Extra nourishment	-	Rs.5,000/-
Medical expenses	-	Rs.1,750/-
Damages to clothes	-	Rs.1,000/-
Pain and suffering	-	Rs.25,000/-
Disability (Rs.4,500 x 12 x 13 x 20%)	-	Rs.1,40,400/-

Total		Rs.1,96,150/-

Rounded off to		Rs.1,96,200/-

6.Before the Tribunal, the Appellant/claimant has filed 8 documents which were marked as Exs.P1 to P8 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.

7.The Appellant/claimant was an agriculturist aged 50 years at the time of the accident and in his claim petition he had pleaded that he was earning Rs.10,000/- per month. However, the Tribunal under the impugned Award has assessed the notional monthly income of the Appellant/claimant at Rs.4,500/- since no documentary evidence was produced by him to substantiate his claim that he was earning Rs.10,000/- per month at the time of the accident. The accident happened in the year 2011. This Court is of the view that the assessment of the notional monthly income of the Appellant/claimant at Rs.4,500/- is low and it has to be enhanced to Rs.6,500/- as per the judgment of the Hon'ble Supreme Court in the case of Syed Sadiq and Others vs. Divisional Manager, United India Insurance Company Limited reported in (2014) 2 SCC 735. In that case, the Hon'ble Supreme Court fixed the notional monthly income of the injured victim, who was a vegetable vendor at Rs.6,500/- when the accident happened in the year 2008. In the case on hand, the accident happened in the year 2011. Therefore applying the same yardstick, this Court fixes the notional monthly income of the Appellant/claimant as Rs.6,500/-.

8.The Appellant/claimant has sustained the following grievous injuries at the time of the accident:

- (a) Amputation of left hand 2nd, 3rd and 4th fingers
- (b) Degloving injury of left hand

- (c) Lacerated injuries 10 x 5 cms
- (d) Multiple injuries

9.The Appellant/claimant was also hospitalized between 16.04.2011 and 19.05.2011 for a period of 34 days as seen from the discharge summary issued by Government Stanley Hospital (Ex.P4). The Doctor who examined the Appellant/claimant (PW2) has assessed 30% total and permanent disability in respect of amputation of fingers and 15% partial and permanent disability in respect of degloving injury in left hand. In all the total disability was fixed by the Doctor at 45%.

10.The Tribunal has rightly adopted the multiplier method for assessing the loss of earning power of the Appellant/claimant due to the grievous injuries sustained by him as a result of the accident. This Court after giving due consideration to the nature of injuries sustained by the Appellant/claimant which include amputation of 3 fingers in the left hand and degloving injuries in the left hand is of the considered view that the whole body disability assessed by the Tribunal at 20% is low and it has to be enhanced to 25% by this Court. The Tribunal has rightly adopted 13 multiplier since the Appellant/claimant was aged 50 years at the time of the accident. Accordingly, the compensation payable to the Appellant/claimant for his continuing or permanent disability is enhanced to Rs.2,53,500/- by this Court from Rs.1,40,400/- fixed by the Tribunal.

11.The Tribunal has awarded a sum of Rs.18,000/- towards loss of income to the Appellant/claimant during the period of his treatment calculated at Rs.4,500/- per month for a period of 4 months. Since monthly income of the Appellant/claimant has been enhanced to Rs.6,500/- by this Court and in view of the fact that the Appellant/claimant has been hospitalized for a long period of 34 days, the calculation for loss of income for a period of 4 months by the Tribunal is not correct and it has to be calculated for a period of 6 months. Accordingly, loss of income during the period of his treatment is enhanced to Rs.39,000/- calculated at Rs.6,500 per month for a period of 6 months by this Court.

12.The Tribunal has awarded a sum of Rs.5,000/- each towards transportation and extra nourishment which is low in the considered view of this Court and it has to be enhanced to Rs.10,000/- each. With regard to the compensation awarded by the Tribunal towards damage to clothing and articles at Rs.1,000/-, the same is a just compensation and it is confirmed by this Court. The Tribunal has failed to award any compensation towards attender charges which the Appellant/claimant is legally entitled to in view of the

grievous injuries sustained by him and for his long period of hospitalization. This Court fixes the same at Rs.25,000/-. The Tribunal has also failed to award any compensation towards loss of amenities to the Appellant/claimant. This Court fixes the same at Rs.25,000/-. The Tribunal has awarded a sum of Rs.1,750/- towards medical expenses and another sum of Rs.25,000/- towards pain and suffering under the impugned Award which in the considered view of this Court is a just compensation and there is no scope for interference.

13.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.1,96,200/- to Rs.3,90,250/- by this Court in the following manner:

Loss of income for six months	
at the rate of Rs.6,500/- p.m.	- Rs.39,000/-
Transportation	- Rs.10,000/-
Extra nourishment	- Rs.10,000/-
Medical expenses	- Rs.1,750/-
Damages to clothes	- Rs.1,000/-
Pain and suffering	- Rs.25,000/-
Disability (Rs.6,500 x 12 x 13 x 25%)	- Rs.2,53,500/-
Loss of amenities	- Rs.25,000/-
Attender charges	- Rs.25,000/-

Total	Rs.3,90,250/-

14.In the result, the appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified award amount of Rs.3,90,250/- 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 MCOP.No.1709 of 2011, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, 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 along with accrued interest lying to the credit of MCOP.No.1709 of 2011 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.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.

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

+1 CC to M/s. N.B. Surekha, Advocate sr 29439.

C.M.A.No.356 of 2014

BS(CO)
SP(23/04/2021)



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