



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1507 of 2016

Sankar, S/o. Kaliyaperumal

...Appellant/Claimant

..Vs..

1. S. Shanmugasundaram
S/o. Sabanayagam Pillai

2. The Divisional Manager
M/s. United India Insurance Co. Ltd.
Nethaji Road, Cuddalore-1

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.04.2016 in MCOP No.498 of 2006 on the file of Motor Accidents Claims Tribunal (1st Additional District Court), Cuddalore.

For Appellant : Mr. S. Kalyanaraman
For R1 : No appearance.
For R2 : Mr. J. Chandran

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 15.04.2016 passed by the Motor Accidents Claims Tribunal (1st Additional District Court), Cuddalore, in MCOP No.498 of 2006.

2. The appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal, has filed this Civil Miscellaneous Appeal seeking for enhancement.

3. The Tribunal under the impugned award, directed the respondents to pay the appellant a compensation of Rs.3,33,200/- as detailed hereunder.

Heads	Amount awarded by the Tribunal (Rs.)
Permanent Disability 40%	2,59,200/-
Pain and suffering	25,000/-



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Heads	Amount awarded by the Tribunal (Rs.)
Medical expenses	10,000/-
Extra Nourishment	10,000/-
Attender Fees	10,000/-
Transport Charges	10,000/-
Loss of income (3x3000)	9,000/-
Total	3,33,200/-

4. The appellant / claimant sustained the following grievous injuries as a result of the accident caused by a vehicle insured with the second respondent on 21.05.2005.

1. Fracture on back bone
2. A fracture on femur joint
3. Rupture of Urithira and damages to kidney
4. Heavy impact on chest. 10 sutured wounds around penis and scrotum areas.

5. Before the Tribunal, the appellant / claimant has filed 18 documents, which were marked as Exs.P1 to P18 and three witnesses were examined on the side of the appellant/claimant, namely, the appellant/claimant himself as P.W.1., and the two doctors who examined the claimant as P.W.2 and P.W.3 respectively. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal. The nature of injuries sustained by the appellant/claimant referred to supra has not been disputed by the respondents before the Tribunal.

6. The doctor who has examined the appellant/claimant has deposed that, on a perusal of medical records it reveals that the appellant/claimant sustained grievous injuries and from the X-ray, it reveals that he has sustained pubic bone superior and inferior pubic rami fracture. He has also deposed that the appellant/claimant cannot stand without the support of his right leg. He has also deposed that the movements of right hip of the appellant / claimant has been restricted due to the injuries sustained by him. The appellant/claimant has also deposed before the Tribunal that he has sustained injuries on his private parts and urine box and his testicles got damaged due to the injuries sustained by him as a result of the accident. The doctor (P.W.2) has assessed the disability of the appellant/claimant at 50%.



7. The doctor (P.W.3) has deposed that at the time of medical examination of the appellant/claimant, he found that the appellant/claimant sustained difficulty in Micturition, Hesitancy, frequency, urgency and incontinence, burning sensation with fever on and off. The doctor (P.W.3) has also deposed that the appellant/claimant has developed post traumatic stricture urethra inspite of continuous treatments at tertiary, institutions and undergoing two major surgeries. The doctor has also deposed that the appellant/claimant is prone to regular urinary tract infection as a result of the injury sustained by him. The doctor P.W.3 has assessed the disability of the appellant/claimant at 30% and issued the disability certificate accordingly, which has been marked as Ex.P18 before the Tribunal. The Tribunal, after taking into consideration the evidence placed on records, which includes the disability certificates Exs.P16 and P18 issued by P.W.2 and P.W.3 doctors respectively has fixed the whole body disability of the appellant/claimant at 40% and adopted multiplier method for the purpose of assessing the loss of earning capacity of the appellant/claimant. This Court does not find any infirmity with regard to the finding of the Tribunal that the appellant/claimant has suffered 40% whole body disability. However, the Tribunal has erroneously fixed the notional income of the appellant/claimant at a paltry sum of Rs.3,000/- per month. In the claim petition, it is mentioned that the appellant/claimant is a washerman and he was earning Rs.200/- per day. The accident happened in the year 2005. If the year of the accident is taken into consideration, this Court is of the considered view that the Tribunal should have fixed the notional income of the appellant/claimant on a higher sum. After giving due consideration to the year of the accident and provisions of Mininum Wages Act, this Court fixes the notional monthly income of the appellant/claimant at Rs.4,500/- instead of Rs.3,000/- fixed by the Tribunal. Accordingly, the loss of earning capacity of the appellant / claimant is fixed by this Court at Rs.3,88,800/-, as detailed hereunder, instead of Rs.2,59,200/-, awarded by the Tribunal to the appellant / claimant towards the compensation for his disability.

$$\text{Rs.4,500/-} \times 12 \times 18 \times 40/100 = \text{Rs.3,88,800/-}$$

8. As observed earlier, the appellant/claimant has sustained grievous injuries, that too, in his private parts, which has caused him difficulty in passing urine. The learned counsel for the appellant also drew the attention of this Court to the various discharge summaries issued by the hospital, which are marked as exhibits before the Tribunal, which reveals that ever since the date of accident the appellant/claimant has been



taking continuous treatment for the injuries sustained by him. It is also seen from the discharge summaries that he has also undergone several surgeries. However, the Tribunal, in the impugned award, has awarded a meager compensation of Rs.25,000/- towards pain and sufferings. This Court, after giving due consideration to the year of the accident and the nature of injuries sustained by the appellant/claimant, fixes the compensation towards pain and sufferings at Rs.50,000/- instead of Rs.25,000/- fixed by the Tribunal.

9. This Court is of the considered view that the Tribunal has awarded a meager compensation of Rs.9,000/- towards loss of income during the period of appellant/claimant's treatment at Rs.3,000/- per month for a period of 3 months, which has to be necessarily enhanced in view of the fact that the appellant has sustained grievous injuries as indicated above. This Court is of the considered view that at least for a period of 8 months, the appellant/claimant would have been unable to do his regular work as a washerman due to the grievous injuries sustained by him. Hence, this Court fixes the compensation towards loss of income at Rs.36,000/- (calculated at Rs.4,500/- per month for a period of 8 months). The Tribunal has also erroneously failed to award any compensation towards the loss of amenities, which the appellant/claimant is legally entitled to in accordance with settled law. This court awards a compensation of Rs.10,000/- towards loss of amenities to the appellant/claimant.

10. As regards the compensation awarded by the Tribunal at Rs.10,000/- towards medical expenses, Rs.10,000/- towards extra nourishment, Rs.10,000/- towards attendant charges and Rs.10,000/- towards transportation charges are concerned, the same is a just compensation and the same is confirmed by this Court.

11. The appellant/claimant was aged 25 years and was a bachelor at the time of accident. Due to the injuries sustained by him in his private parts as a result of the accident, he would have certainly lost his marital prospects. Hence, compensation will have to be awarded towards loss of marital prospects also, which the Tribunal has erroneously failed to award. This Court awards a compensation of Rs.10,000/- towards the loss of marital prospects to the appellant/claimant.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.3,33,200/- to Rs.5,34,800/- in the following manner.



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court
Permanent Disability 40%	2,59,200/- (3000x12x18x40/100)	3,88,800/- (4500x12x18x40/100)
Pain and suffering	25,000/-	50,000/-
Medical expenses	10,000/-	10,000/-
Extra Nourishment	10,000/-	10,000/-
Attender Fees	10,000/-	10,000/-
Transport Charges	10,000/-	10,000/-
Loss of income	9,000/- (3x3000)	36,000/- (8x4500)
Loss of Amenities	-	10,000/-
Loss of marital prospects	-	10,000/-
Total	3,33,200/-	5,34,800/-

13. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.3,33,200/- to Rs.5,34,800/-, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

14. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.498/2006 on the file of the Motor Accidents Claims Tribunal (1st Additional District Court), Cuddalore, within a period of eight 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. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

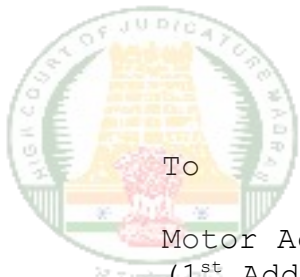
Sd/-

Assistant Registrar

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Sub Assistant Registrar

Bga



To

Motor Accidents Claims Tribunal
(1st Additional District Court),
Cuddalore.

Copy To

The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.1507 of 2016

LN(CO)
GN(29/11/2021)