



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2021

CORAM:

HONOURABLE MR. JUSTICE R.SUBBIAH
and
HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2204 of 2017

S.Selvaraj
S/o.Seetharaman ... Appellant/Petitioner

Vs.

1.J.M.Vishal
(The 1st respondent remained
exparte in the lower court and hence
notice to 1st Respondent in the
above appeal is dispensed with)

2.The New India Assurance Co.Ltd.,
No.45, 2nd Line Beach,
Moore Street,
Chennai - 600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2012 made in M.C.O.P.No.4594 of 2002 on the file of Motor Accidents Claims Tribunal, VI - Court of Small Causes, Chennai.

For Appellant : Mrs.Ramya V.Rao

For R2 : Mr.S.Dhakshnamoorthy

JUDGMENT

(Judgment of the Court was delivered by SATHI KUMAR SUKUMARA KURUP, J.)

(heard through video-conferencing)

This Civil Miscellaneous Appeal is filed by the claimants, seeking enhancement of compensation granted by the Tribunal in the award dated 07.06.2012 made in M.C.O.P.No.4594 of 2002 on the file of Motor Accidents Claims Tribunal, VI - Court of Small Causes, Chennai.



2.The appellant is the claimant in M.C.O.P.No.4594 of 2002 on the file of Motor Accidents Claims Tribunal, VI - Court of Small Causes, Chennai. He filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.05.2002.

Brief facts:

3.On 05.05.2002, at about 10.15 hours, the appellant/claimant was travelling as a pillion rider in a motorcycle bearing Registration No.TN-07-U-7977 proceeding from South to North at Anna Salai, near Pallavan House, Chennai. At that time, the rider of the motorcycle drove the same in a rash and negligent manner and applied sudden brake and hit against the motorcycle. In the impact, the appellant/claimant sustained grievous injuries.

4.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent riding by the rider of the motorcycle, belonging to the first respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.14,72,543/- as compensation to the appellant/claimant.

5.Not being satisfied with the amount awarded by the Tribunal under various heads, the appellant has come out with the present appeal seeking enhancement of compensation.

6.Mrs.Ramya Rao, learned counsel appearing for the appellant had submitted her arguments. As per her submissions, the award passed by the Motor Accidents Claims Tribunal, VI - Court of Small Causes, Chennai, is against the law, weight of evidence and probabilities of the case. The claims Tribunal ought to have awarded the entire claim for Rs.14,72,543/-. The claimant was examined as P.W.1 and clearly deposed that immediately after the accident, he was taken to Government Hospital. Thereafter, he was shifted to Apollo Hospital wherein, on diagnosis, it was found that there is contusion of the brain, right frontal fracture of skull, fracture of ribs in right side, contusion and haemothorax of right side, right C3 to T1 nerve roots injury, paralysis of right upper limb and right side tongue, fracture of right clavicle. Dr.K.J.Mathiazhagan, was examined as P.W.4 to speak about the difficulties and deformities caused to the claimant and assessed the disability at 60% for the nerve injuries from C3 to T1 as total permanent disability and 10% partial permanent disability for fracture of Zygoma and 20% partial permanent disability for fracture of Maxilla. Dr.Rajappa, who is an Ophthalmologist was examined as P.W.3 stating that he had assessed the disability for the injury to



loss of vision to the tune of 15%. From the evidence of P.W.4, it is clear that the appellant had suffered total permanent disability to the tune of 60%. From the combined evidence of P.W.3 and P.W.4, it is established that the appellant had suffered 45% partial permanent disability. Here is the case where the claimant was unable to attend Court. Therefore, his wife was examined as P.W.1. The appellant had filed Income Tax Return pertaining to the year 2001-2002, 2002-2003. He was earning income from the business of purchase and sale of handicraft items. Apart from that, he was drawing income from agriculture also. The claims Tribunal ignored the same while calculating the income. The learned Tribunal ought to have calculated the future prospects at 50% of income especially the prospects to earn has affected due to partial permanent disability. The age of the appellant was 40 years at the time of accident, hence the proper multiplier is '16'. The claimant had suffered 100% disability and also 100% loss of earning capacity. The Tribunal failed to grant any compensation under the head permanent disability. The Tribunal awarded under the head pain and sufferings only Rs.40,000/-. The Tribunal had erred in awarding only a sum of Rs.10,000/- each under of the head viz., "Transportation" and "Extra Nourishment". It could have granted reasonable compensation under above heads. The claims Tribunal ought to have awarded under the head of "mental agony" to the appellant. In any event, the award passed by the Tribunal is on the lower side. Therefore, the claimant has preferred this appeal.

7.The learned counsel for the 2nd respondent/Insurance Company had submitted his arguments. As per his arguments, the learned Tribunal had properly assessed the evidence and calculated the compensation and arrived at a just compensation and the same does not warrant any interference by this Court. The appeal lacks merits and the same is liable to be dismissed.

Point for consideration is as follows:

Whether the appellant is entitled to enhanced compensation as prayed for?

8.On perusal of the records pertaining to M.C.O.P.No.4594 of 2002 on the file of Motor Accidents Claims Tribunal, VI - Court of Small Causes, Chennai, it is found that the learned Tribunal had fixed the income at Rs.5,000/- p.m., and calculated the compensation ignoring the evidence available before the Tribunal through the Ophthalmologist and Neurologist. Therefore, the disability assessed by the learned Tribunal is found to be not proper. Also loss of future prospects had not been taken note of and the award granted under various non-pecuniary heads is on the lower side. Therefore, the submission of the learned counsel



for the appellant/claimant is accepted. In the light of the records, the submissions of the learned counsel for the 2nd respondent/Insurance Company is rejected.

9. On an analysis of entire evidence both oral and documentary, this Court is of the view that the Tribunal has rightly fixed the monthly income of the injured/claimant at Rs.5,000/-. However, considering the fact that the injured sustained grievous injuries and got 65% disability, while applying multiplier '16', the Tribunal though awarded a sum of Rs.6,24,000/-, unfortunately, the Tribunal has completely ignored to add future prospects. Therefore, this Court feels it appropriate to add 25% towards future prospects and thereby the award under the head 'loss of earning power' due to permanent disability is assessed as Rs.7,80,000/- {Rs.5,000/- + Rs.1,250/- (25% of Rs.5,000/-) X 12 X 16 X 65/100}. The claimant/injured suffered 65% disability which would certainly require him to undergo treatment throughout his life, but the Tribunal has not awarded any amount towards future medical expenses and therefore, this Court is inclined to award a sum of Rs.25,000/- towards future medical expenses.

10. It is also to be noted that since the claimant/injured suffered grievous injuries under the head of pain and sufferings, the Tribunal awarded only a sum of Rs.40,000/- which in the opinion of this Court is required to be enhanced, accordingly a sum of Rs.60,000/- is awarded under the head of pain and sufferings.

11. In respect of other heads, the Tribunal has adequately awarded compensation which do not warrant any interference. In view of the above, the award amount granted by the Tribunal is enhanced to Rs.16,73,543/- from Rs.14,72,543/-. The modification of award amount under the various heads, are as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning power	6,24,000/-	7,80,000/-	Enhanced
2.	Loss of income	5,000/-	5,000/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Medical expenses	7,33,543/-	7,33,543/-	Confirmed



6.	Attendant charges	25,000/-	25,000/-	Confirmed
7.	Loss of amenities	25,000/-	25,000/-	Confirmed
8.	Pain & sufferings	40,000/-	60,000/-	Enhanced
9.	Future medical expenses	-	25,000/-	Granted
	Total	Rs.14,72,543/-	Rs.16,73,543/-	Enhanced by Rs.2,01,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,72,543/- is hereby enhanced to Rs.16,73,543/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.4594 of 2002 on the file of Motor Accidents Claims Tribunal, VI - Court of Small Causes, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi
To

The Judge,
Motor Accidents Claims Tribunal,
VI - Court of Small Causes,
Chennai.

+1cc to Mr.S.Dhakshnamoorthy, Advocate Sr.14452

C.M.A.No.2204 of 2017

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