

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.02.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.310 of 2008

S.Prakash

...Appellant/Petitioner

...VS...

1.S.P.Y.Reddy, Proprietor,
M/s.E.S.P.I.Plastic Paper Industry,
Industrial Estate, Nandiyal, Karnul District,
Andhra Pradesh

2.The Divisional Manager,
National Insurance Co.Ltd.,
No.19, Officers Line Road, First Floor,
Opp.to Laxmi Theatre,
Vellore.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed against the judgment and decree dated 2.3.2007 made in M.C.O.P.No.73 of 2004 on the file of the Motor Accidents Claims Tribunal (ADSJ-FTC), Vellore.

For Appellant : Mr.C.Prabakaran

For R2 : Mr.N.Vijayaraghavan

JUDGMENT

The appellant is the petitioner/claimant in M.C.O.P.No.73 of 2004 on the file of the Motor Accidents Claims Tribunal (ADSJ-FTC), Vellore.

2. In an accident that had occurred on 03.10.2002 at about 9.45p.m, the appellant/claimant sustained injuries. According to the claimant, the accident occurred due to rash negligent driving of the driver of the van owned by the first respondent-M/s.E.S.P.I.Plastic Paper Industry, Andhra Pradesh. The vehicle was insured with the second respondent/Insurance Company. He has prayed for a total compensation of Rs.5,00,000/-. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the negligent act of the driver of the said van and awarded compensation as detailed below:-

Pain and suffering	Rs. 5,000/-
Medical Expenses	Rs. 66,654/-
Permanent Disablement (70%)	Rs. 70,000/-
Loss of income	Rs. 5,000/-
Total	Rs.1,46,654/-

The total compensation of Rs.1,46,654/- amount was directed to be paid with interest at the rate of 6% per annum. Feeling aggrieved, the claimant has preferred this appeal for enhancement of compensation.

3. The learned counsel for the claimant would submit that the right hand of the claimant lost its functioning power and he has to depend on others throughout his life for his day to day activities and that therefore, the compensation awarded by the tribunal is inadequate.

4. Learned counsel for the second respondent-Insurance Company submitted that the tribunal, taking into consideration that the said accident occurred on 3.10.2002 has awarded the compensation, which is not on the higher side.

5. As per the dictum laid down by the Hon'ble Supreme Court in Nagappa Vs. Gurudayal Singh (2003 ACJ 12), the tribunal is required to have some guess work taking into account the inflation factor and to award just compensation which is reasonable on the basis of evidence on record.

6. In the case at hand, the age of the claimant was 31 at the time of accident. He was also a rice merchant. On account of the accident, he suffered 70% disability. In order to prove the disability aspect he has examined P.W.2, Doctor. There is no contra evidence. There is no appeal against the assessment of disability. He was hospitalized from 03.10.2002 to 09.10.2002 again from 09.12.2002 to 11.12.2002. It is seen that he took treatment as out-patient also. The tribunal awarded a meagre sum of Rs.5,000/- under the head "Pain and Suffering". He suffered fracture on the right hand and undergone surgeries. Having regard to the above circumstances, this Court is of the view, the amount awarded under this head is too low and it should be enhanced from Rs.5,000/- to Rs.25,000/-.

7. The tribunal has awarded Rs.66,654/- towards Medical Expenses, the tribunal has not chosen to award any amount

towards Future Medical Expenses, Expenses towards Attendant, Transportation and extra nourishment. The claimant would certainly have incurred expenses towards transport, attendant and extra nourishment. Therefore, I am inclined to enhance the amount from Rs.66,654/- to Rs.70,000/- under head of "Medical Expenses".

8. The tribunal has awarded Rs.70,000/- under the head permanent disability. It has calculated the amount at the rate of Rs.1000/- per percentage of disability. This Court, in National Insurance Co.Ltd Vs.G.Ramesh (2013(2)TNMAC 583) has held that it would be more appropriate to accept Rs.3,000/- per percentage of disability. In the light of the decision and taking into account the present percentage of disability suffered by the claimant, this Court is inclined to award of Rs.2,10,000/- (70 x Rs.3,000/-) under the head of "disability" .

9. The tribunal has awarded a minimum amount of Rs.5,000/- towards loss of income. The petitioner was at the relevant time a rice merchant. He would have lost considerable income due to the accident and during the period of hospitalisation. Hence, the amount under this head should be increased to Rs.25,000/-. In view of the above, I hold that the appellant is held enhanced compensation as detailed below:-

Sl. No.	Head of the award amount	Amount awarded by the Tribunal	Amount now enhanced by this Court
1.	Pain and suffering	Rs. 5,000/-	Rs. 25,000/-
2.	Medical Expenses	Rs. 66,654/-	Rs. 70,000/-
3.	Permanent Disablement (70%)	Rs. 70,000/-	Rs. 2,10,000/-
4.	Loss of income	Rs. 5,000/-	Rs. 25,000/-
Total		Rs. 1,46,654/-	Rs. 3,30,000/-

10. For the reasons stated above, this Civil Miscellaneous Appeal is partly allowed and the award amount is enhanced from Rs.1,46,654/- to Rs.3,30,000/- (Rupees three lakhs and thirty thousand only) in all. The insurer shall pay the enhanced portion of the award with interest at 7.5% p.a on and from 02.04.2007 till date of deposit. No costs.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

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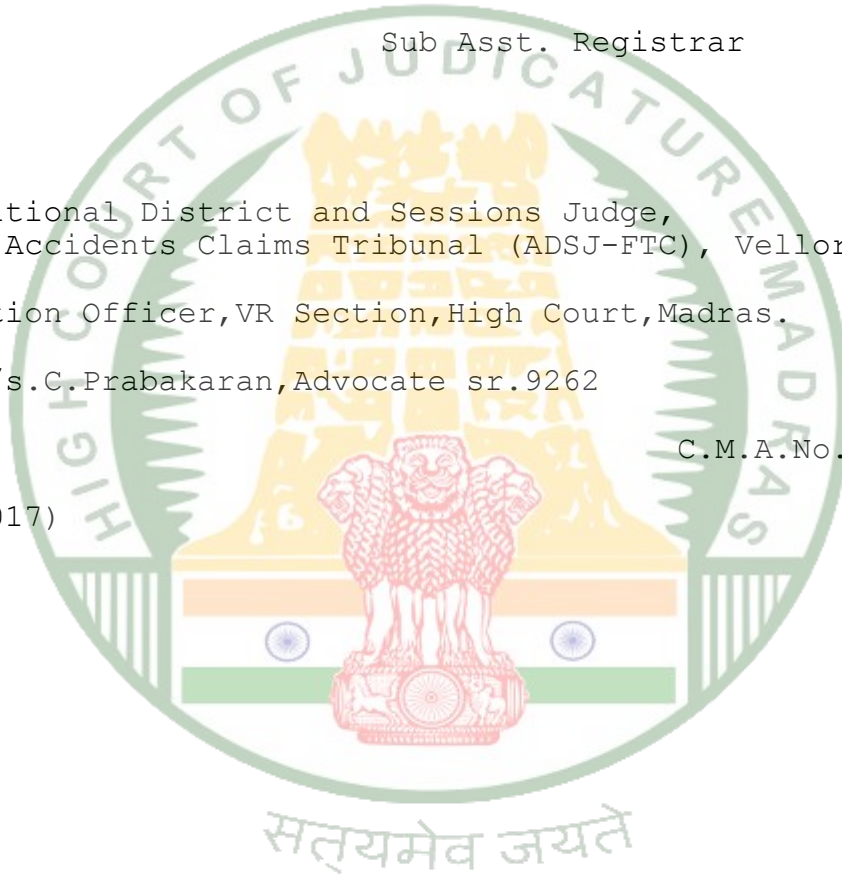
1.The Additional District and Sessions Judge,
The Motor Accidents Claims Tribunal (ADSJ-FTC), Vellore.

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

+1cc to M/s.C.Prabakaran,Advocate sr.9262

C.M.A.No.310 of 2008

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