

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.02.2017

CORAM

**THE HONOURABLE MR.JUSTICE N.AUTHINATHAN**

**C.M.A.No.957 of 2008**

The New India Assurance Co. Ltd.,  
New No.372, Old No.231, T.T.K.Road,  
Alwarpet, Chennai.

...Appellant

...VS...

1.D.Mani

2.R.Srimachavel

... Respondents

(The second respondent herein is the first respondent before the Tribunal and he remained ex parte before the Tribunal. Hence, summons to the second respondent herein may be dispensed with)

**Prayer:** Civil Miscellaneous Appeal is filed against the order and decretal order dated 03.10.2007 made in M.C.O.P.No.2107 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Court - Fast track Court No.3), Coimbatore.

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|-----------------|-----------------------------|
| For Appellant   | : Mr.S.Manohar              |
| For Respondents | : Mr.S.S.Swaminathan for R1 |
|                 | R2- Ex parte                |

### **JUDGMENT**

The second respondent-Insurance Company in M.C.O.P.No.2107 of 2005 on the file of the Motor Accidents Claims Tribunal, (Additional District and Sessions Court - Fast track Court No.3), Coimbatore, is the appellant herein. The first respondent herein, is the claimant and the second respondent herein is

the owner of the offending vehicle.

**2.** The first respondent/claimant claimed a compensation of Rs.4,85,000/- for the injuries sustained by him in the accident that had taken place on 29.11.2003. The Tribunal has granted a compensation of Rs.3,27,153/- as against the claim of Rs.4,85,000/-.

3. On appreciation of evidences, the Tribunal has held that the accident occurred only due to the rash and negligent driving of the Tanker lorry bearing registration No.N-38-Q-7465. Challenging the quantum of compensation passed by the Tribunal, the Insurance Company has preferred the present appeal. No arguments have been advanced with regard to question of negligence.

4. A perusal of the materials would reveal that the claimant took treatment as inpatient at Ganga Hospital, Coimbatore, from 29.11.2003 to 30.12.2003. Ex.P6-Wound Certificate and Ex.P7-Discharge Summary were issued by Ganga Hospital, Coimbatore. The claimant sustained injuries on his right thigh and fracture on his right wrist. PW2-doctor has assessed the disability at 33% and issued disability certificate Ex.P10. The Tribunal, on the basis of evidence of PW2, has fixed the disability at 33%. However, there is no dependable evidence to show that the injuries sustained by the claimant were affected his earning capacity. The Tribunal applied the multiplier method and

awarded a sum of Rs.2,13,840/- under the head 'permanent disability and loss of earning power'.

5. Learned counsel for the appellant contended that in the absence of dependable evidence to show that the injuries sustained by the claimant affected his earning capacity, it cannot be said that the Tribunal is justified in applying the multiplier method. He would further submit that the Tribunal has fixed the monthly income at Rs.3000/- which is on the higher side.

6. However, the appellant-Insurance Company has to pay under the head permanent disability, if calculated at the rate of Rs.3,000/- per percentage of disability, the compensation under the head permanent disability, comes to Rs.99,000/- (33% x Rs.3000/-). The Tribunal has awarded a sum of Rs.18,000/- under the head 'loss of income' at the rate of Rs.3,000/- p.m. (for the period of six months) and it appears to be reasonable and the same is hereby confirmed as the claimant would have earned Rs.100/- per day.

7. It is seen that the claimant was hospitalised from 29.11.2003 to 30.12.2003. Having regard to the period of hospitalisation and nature of injuries sustained by him, this Court is inclined to award under the head "Pain and Sufferings" Rs.30,000/- instead of Rs.20,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs.7,000/- under the head "attendant charges".

Considering the period of hospitalisation, this Court is inclined to award under the head "attendant charges" Rs.10,000/- instead of Rs.7,000/- awarded by the Tribunal. The Tribunal has awarded a meagre amount of Rs.3,000/- under the head "extra nourishment". Considering the nature of injuries sustained by him, this Court is inclined to award under the head "extra nourishment" at Rs.5,000/- instead of Rs.3,000/- awarded by the Tribunal. As per Ex.P9-series medical bills, the Tribunal has awarded a sum of Rs.65,313/- towards medical expenses. The actual amount incurred towards medical expenses does not require any interference and the same is hereby confirmed. The Tribunal has not awarded any amount towards transport charges. It is seen from the records that the claimant has admitted in Ganga Hospital as inpatient for a period of one month and therefore, shifted to his residence, for which he would have incurred transport charges. Therefore, this Court is inclined to award a sum of Rs.5,000/- towards transport charges. Having regard to the evidence adduced by PW2-Doctor, this Court is inclined to award a sum of Rs.30,000/- towards loss of amenities. In view of the above, the compensation has to be corrected as follows:

| <i>Sl. No.</i> | <i>Head of the award amount</i> | <i>Amount awarded by the Tribunal</i> | <i>Amount now enhanced by this Court</i> |
|----------------|---------------------------------|---------------------------------------|------------------------------------------|
| <b>1.</b>      | Loss of amenities               | -                                     | Rs. 30,000/-                             |
| <b>2.</b>      | Medical Expenses                | Rs. 65,313/-                          | Rs. 65,313/-                             |

| <i><b>Sl. No.</b></i> | <i><b>Head of the award amount</b></i> | <i><b>Amount awarded by the Tribunal</b></i> | <i><b>Amount now enhanced by this Court</b></i> |
|-----------------------|----------------------------------------|----------------------------------------------|-------------------------------------------------|
| <b>3.</b>             | Permanent Disablement (33%)            | Rs. 2,13,840/-                               | Rs. 99,000/-                                    |
| <b>4.</b>             | Loss of income during hospitalisation  | Rs. 18,000/-                                 | Rs. 18,000/-                                    |
| <b>5.</b>             | Transportation                         | Rs.-                                         | Rs. 5,000/-                                     |
| <b>6.</b>             | Attendant charges                      | Rs.7,000/-                                   | Rs. 10,000/-                                    |
| <b>7.</b>             | Pain and sufferings                    | Rs.20,000/-                                  | Rs. 30,000/-                                    |
| <b>8.</b>             | Extra nourishment                      | Rs. 3,000/-                                  | Rs. 5,000/-                                     |
| <b>Total</b>          |                                        | <b>Rs.3,27,153/-</b>                         | <b>Rs.2,62,313/-</b>                            |

8. For the reasons stated above, this Criminal Miscellaneous Appeal is partly allowed and the award amount is reduced to Rs.2,62,313/-. Learned counsel for the appellant Insurance Company has submitted that they had already deposited the entire award amount. The excess amount, if any, is ordered to be returned to the appellant – Insurance Company. No costs.

**21.02.2017**

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To:

The Motor Accidents Claims Tribunal (  
(Additional District and Sessions Court  
– Fast Track Court No.3)  
Coimbatore.

**N.AUTHINATHAN,J.,**

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