



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1111 of 2015

Kamban

... Appellant/Petitioner

Vs.

1.S.V.S.Vijaya

2. The Branch Manager,
National Insurance Co.,Ltd.,
4132, East Street,
Pudukottai.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.31 of 2012 on the file of the Chief Judicial Magistrate/Motor Accidents Claims Tribunal, Pudukottai dated 06.11.2014.

For Appellant : Mr.N.Balakrishnan

For R-1 : No appearance

For R-2 : Mr.J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 06.11.2014 made in M.C.O.P.No.31 of 2012 by the Chief Judicial Magistrate/Motor Accidents Claims Tribunal, Pudukottai.

2. It is a case of injury sustained by the injured/claimant in an accident took place on 21.03.2011 at about 01.30 p.m., at Pudukottai to Alangudi Road near Thadikonda Iyanaar Kovil.

3. It is the case of the injured/claimant before the Tribunal that when he was travelling in a two wheeler along with his friend towards south-west direction at Pudukottai-Alangudi road, near Thadikonda Iyanaar Temple, the bus bearing registration No.TN 55 T 4747 belonging to the first respondent and insured with the second respondent, was driven by its driver in a rash and negligent manner and as a result of which, the bus dashed against the two



wheeler and caused the accident and in the said accident, the injured sustained grievous injuries.

4. The claimant filed an application in M.C.O.P.No.31 of 2012 before the Chief Judicial Magistrate/Motor Accidents Claims Tribunal, Pudukottai, seeking compensation.

5. Before the Tribunal, the injured/claimant examined two witnesses as P.W.1 and P.W.2 and marked eight documents as Ex.P.1 to Ex.P.8. The respondents did not let in any oral or documentary evidence.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to first respondent and insured with the second respondent/Insurance Company and therefore, held that the first and second respondents are jointly and severally liable to pay compensation.

7. Against which, the appellant/claimant filed this present appeal seeking enhancement of compensation.

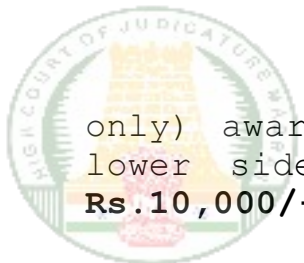
8. The learned counsel for the appellant/claimant would submit that the victim sustained injuries and he was treated by P.W.2-Doctor. The Doctor had issued the Disability Certificate under Ex.P7 assessing the permanent disability at 40%. But, the Tribunal awarded Rs.80,000/- (Rs.40 X 2000). The learned counsel for the appellant relied on the Judgment rendered in **P.Elangovan vs. S.Murali and two others** reported in **2017 (1) TN MAC 251**, wherein it has been held that a sum of Rs.3,000/- should be fixed for 1% disability.

9. Considering the above submission, this Court fixes a sum of Rs.3,000/- (Rupees Three Thousand Only) for 1% disability and awards an amount of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand Only), towards permanent disability.

10. Further, the sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards pain and sufferings, is on the lower side and therefore, the same is enhanced to a sum of **Rs.50,000/-** (Rupees Fifty Thousand only).

11. Further, the sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards extra nourishment, is on the lower side and therefore, the same is enhanced to a sum of **Rs.10,000/-** (Rupees Ten Thousand only).

12. Further, the sum of Rs.5,000/- (Rupees Five Thousand



only) awarded by the Tribunal towards Transportation, is on the lower side and therefore, the same is enhanced to a sum of **Rs.10,000/-** (Rupees Ten Thousand only).

13. Similarly, the Tribunal has not awarded any compensation towards loss of amenities. Therefore, a sum of **Rs.10,000/-** (Rupees Ten Thousand only) is awarded by this Court.

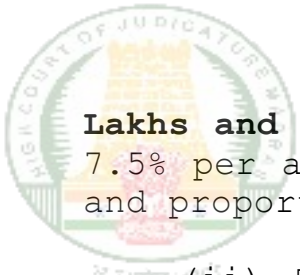
14. Similarly, the Tribunal has not awarded any compensation towards attendant charges. Therefore, a sum of **Rs.10,000/-** (Rupees Ten Thousand only) is awarded by this Court and the compensation awarded towards Future Medical Expenses, is confirmed.

15. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability	80,000	1,20,000	enhanced
2.	For pain and sufferings	10,000	50,000	enhanced
3.	For Extra Nourishment	5,000	10,000	enhanced
4.	For transportation	5,000	10,000	enhanced
5.	For medical expenses	30,000	30,000	confirmed
6.	For Loss of Amenities	-	10,000	awarded
7.	For Attendant Charges	-	10,000	awarded
	Total	Rs.1,30,000	Rs.2,40,000	By enhancing a sum of Rs.1,10,000/-

16. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.1,30,000/- (Rupees One Lakh and Thirty Thousand only)** to a sum of **Rs.2,40,000/- (Rupees**



Lakhs and Forty Thousand Only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount of **Rs.2,40,000/- (Rupees Two Lakhs and Forty Thousand only)** with accrued interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Pudukottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.N.Balakrishnan , Advocate in SR No. 80680
+ 1 cc TO Mr.J.S.Murali , Advocate in SR No. 80839

pm

AE/KP/SAR2/23.10.2017/4P/5C

C.M.A (MD) No.1111 of 2015
22.09.2017