

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on : 29.08.2017****Pronounced on : 21.09.2017****CORAM****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD)No.141 of 2017****WEB COPY**

N.Veerappan

... Appellant / petitioner

Vs.

K.Selvam

.. Respondent / Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 02.06.2016 made in MCOP No.439 of 2015 on the file of Motor Accidents Claims Tribunal, Special Sub-Court, Thanjavur.

For Appellant :Mrs.S.Jainab Beevi
For Respondent :No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award, dated 02.06.2016 made in MCOP No.439 of 2015 by the learned Special Sub Judge, Motor Accident Claims Tribunal, Thanjavur.

2. It is a case of injury sustained by the injured/claimant in the accident, which took place on 03.08.2014 at about 7.00 a.m., at Kulamangalam main road. When the injured was going in his bicycle from east to west at Kulamangalam main road, a mini auto bearing registration No.TN 49 AL 8574, which belongs to the respondent, came on the opposite side, in a rash and negligent manner and dashed behind the bicycle, as a result of which, the injured/claimant sustained injuries. Hence, he filed an application in M.C.O.P.No.439 of 2015 before the learned Special Sub Judge, Motor Accident Claims Tribunal, Thanjavur, seeking compensation.

3. Before the Tribunal, the petitioner/Claimant was examined as P.W.1 and Exs.P.1 to Ex.P.6 were marked. On the side of the respondent, no oral or documentary evidence was marked.

4. 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 auto and directed the respondent to pay the compensation of Rs.22,000/-.

5. Aggrieved over the said award, the appellant/claimant has filed this present appeal seeking enhancement of compensation.

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6. The only point for consideration in this appeal is whether the appellant/claimant is entitled for enhancement of compensation or not?.

7. The learned counsel for the appellant/claimant would draw the attention of this Court to paragraph No.9 of the judgement of the Tribunal, where the learned Judge would find that replacement of the knee had taken place on 23.11.2014 and it is stated by the learned Judge that the appellant's evidence does not say that the appellant had got permanent disability and therefore, the injury can be taken as simple injury and has erroneously fixed the compensation as Rs.22,000/-. Hence, the same is to be enhanced.

8. Heard the learned counsel for the appellant/claimant. Though notice was sent twice to the respondent, he has not appeared either in person or through his advocate. Hence, this Court proceeds with the material placed before this Court.

9. Perusal of records would show that the learned Judge had recorded in his findings that the appellant established the accident and the treatment was given to him, but he did not file any medical bills. While awarding the compensation, the learned Judge has not considered the compensation on different heads and it is not known why the medical bills were not filed. But the FIR and the connected documents were shown that the occurrence had taken place. As per the discharge summary, the appellant had been in hospital from 20.09.2014 to 11.10.2014 and from 21.11.2014 to 26.11.2014 and replacement of knee is a grievous injury and therefore, the Court below ought to have given the compensation on various heads, that too, when the accident is also not disputed.

10. Accordingly, this Court awards a sum of Rs.1,00,000/- for pain and sufferings; a sum of Rs.10,000/- for attendant charges and a sum of Rs.25,000/- for future medical expenses. Though there is no proof for permanent disability, since the discharge summary shows that the claimant had undergone treatment for removal of kneecap, the appellant's disability can be fixed at 30% and accordingly, it is fixed at 30%. Accordingly, as per the judgment of this Court in **National Insurance Company Limited v. G.Ramesh and another** reported in **2013 (2) TN MAC 583**, a sum of Rs.3,000/- (Rupees Three Thousand only) has to be awarded for 1% disability and by awarding a sum of Rs.3000/- for each percentage of disability, which comes to Rs.90,000/- (30% X Rs.3000). In all other heads, the amounts awarded by the Tribunal stands unaltered.



To,

1. The Special Sub-Judge,
Motor Accidents Claims Tribunal,
Thanjavur.

COPY TO

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Vivekanandan, Advocate Sr.No.80058

SSM/RJ2

VB/KK/SAR3/23/10/2017/4P/4C

C.M.A(MD)No.141 of 2017
21.09.2017