



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.235 of 2017

Gunasekaran

... Appellant/Petitioner

Vs.

1.Thangavel

2.Angammal

3.M/s.New India Assurance Co., Ltd.,

Rep. By the Branch Manager,

No.3, Main Road,

Dindigul District.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this Appeal and enhance the Compensation awarded in M.C.O.P.No.48 of 2012, on the file of the Motor Accident Claim Tribunal (Principal Sub Court), Dindigul, dated 21.10.2013.

For Appellant : Mr.C.K.M.Appaji

For R3 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-claimant against the award of Rs.2,19,594/- (Rupees Two Lakhs Nineteen Thousand Five Hundred Ninety Four Only) for the injuries sustained by the appellant-claimant, driver, in the accident occurred on 15.10.2011, when he was coming from Vedachandur to Ottanchatram Road near Naga Mill on the left side of the road and at that time, a Mahendra Van bearing Registration No.TN-27-K-6364 belonging to the second respondent was driven by its driver in a rash and negligent manner and dashed against the appellant-claimant and caused the accident. Therefore, the claim petition is filed.

2. On contest, the Tribunal, based on the evidence of P.W.1 and filing of Ex.P.1 - F.I.R against the first respondent-driver of the Mahendra Van and Ex.P2 - Accident Register, Ex.P6-Wound Certificate, found that the accident occurred only due to the rash and negligent driving of the driver of the second respondent and awarded the compensation of Rs.2,19,594/- (Rupees Two Lakhs Nineteen Thousand Five Hundred Ninety Four Only) to the appellant-claimant.



3. Aggrieved over the quantum of compensation, the appellant-claimant filed the present appeal.

4. Heard Mr.C.K.M.Appaji, learned Counsel for the appellant-claimant and Mr.J.S.Murali, learned Counsel for the third respondent -Insurance Company and perused the materials available on record.

5. The first respondent/driver of the offending vehicle remained exparte before the Tribunal and hence, notice to him is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in **Mrs.Jamunabai v. Chhote Singh** reported in **I (2004) ACC 190 (FB)**.

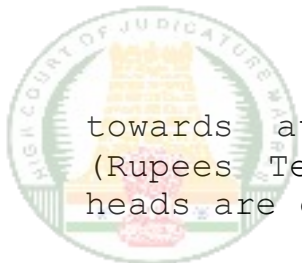
6. The Tribunal, based on the evidence of P.W.1 and Ex.P.2-FIR, rightly came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and the said vehicle was insured with the third respondent Insurance Company and also came to the conclusion that the deceased was also negligent in driving the vehicle and therefore, the Tribunal fixed 25% of the contributory negligence on the part of the deceased. Therefore, the Tribunal directed the third respondent-Insurance Company. Hence, the said finding, based on evidence, cannot be interfered with.

7. It is seen that in the accident, the appellant-claimant sustained permanent disability at 40% as per Exs.P.2 and P.6 - Disability Certificate and X-ray respectively and the Tribunal, taking into consideration the fact that the appellant-claimant recovered from the injuries, determined the disability at 30% and the same cannot be found fault with. However, the Tribunal took only a sum of Rs.2,000/- (Rupees Two Thousand only) for 1% permanent disability and awarded a total sum of Rs.60,000/- (Rupees Sixty Thousand only) ($30\% \times 2,000 = 60,000$). This Court fixes a sum of Rs.3,000/- (Rupees Three Thousand Only) for 1% permanent disability and awards a total sum of Rs.90,000/- (Rupees Ninety Thousand Only) towards disability.

8. A sum of Rs.15,000/- (Rupees Fifteen Thousand only) was awarded by the Tribunal towards pain and sufferings, which is on the lower side and therefore, this Court enhances the same to a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only).

9. Further, a 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).

10. Similarly, The Tribunal has not awarded any compensation



towards attendant's charges. Therefore, a sum of **Rs.10,000/-** (Rupees Ten Thousand only) is awarded by this Court and other heads are confirmed.

11. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

12. 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 (30%)	60,000	90,000	enhanced
2.	For pain and sufferings	15,000	25000	enhanced
3.	For Nutrition	5,000	10,000	enhanced
4.	For attendant charges		10,000	awarded
5.	For loss of income during treatment period	9,000	9,000	confirmed
6.	For Damages of clothes	500	500	confirmed
7.	For Medical Expenses	1,30,094	1,30,094	confirmed
	Total	Rs.2,19,594	Rs.2,74,594	By enhancing a sum of Rs.68649/-

13. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.2,19,594/- (Rupees Two Lakhs Nineteen Thousand Five Hundred Ninety Four only) to a sum of **Rs.2,74,594/-** (Rupees Two Lakhs Seventy Four Thousand Five Hundred Ninety Four 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) Since, 25% contributory negligence has been fixed on the appellant-claimant, he is entitled only to a sum of **Rs.2,05,945/- (Rs.2,74,594-Rs.68,649)** along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(iii) The claimant is directed to submit his Savings Bank Account Detail along with the copy of his passbook to the Tribunal **forthwith**;

(iv) The third respondent-Insurance is directed to deposit the entire award amount namely, Rs.2,05,945/- along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.48 of 2012 on the file of the Motor Accidents Claims Tribunal - cum - Principal Sub Court, Dindigul, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(v) On compliance of payment of additional Court Fees, if any, by the claimant, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant-claimant, through RTGS/NEFT system, after getting her Account Details, within a period of **two weeks thereafter**; and

(vi) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Dindigul,

2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 17533

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 17527

AM

TE/MMS/SAR-I : 25/05/2017 : 4P/5C