

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 24.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.M.A. (MD) No.242 of 2017**

Madasamy

... Appellant/Petitioner

Vs.

1.James

2.National Insurance Company Ltd.,
Through its Divisional Manager,
No.37-C, S.N.High Road,
Tirunelveli.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.19 of 2014, on the file of the Motor Accident Claims Tribunal, (Special Subordinate Court), Tirunelveli, dated 09.06.2014.

For Appellant : Mr.T.Selvakumaran

For R1 : Mr.M.M.Manivel Pandian

For R2 : Mr.J.S.Murali

* * * * *

JUDGMENT

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, (Special Subordinate Court), Tirunelveli in M.C.O.P.No.19 of 2014, the appellant-claimant has filed the present appeal.

2.The appellant, who is the claimant, filed claim petition in MCOP.No.19 of 2014 for the injuries sustained by him in the accident that occurred on 21.11.2013 claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation. The first respondent is the owner of the vehicle involved in the accident and the second respondent is the insurer of the vehicle.

3.Facts of the case:-

According to the appellant, after his work, he was walking on the road at Travellers Bungalow at Vannarpettai and at that time, the first respondent drove his motorcycle in a rash and negligent manner and dashed against him. Due to the said impact, he suffered multiple injuries. He took treatment as inpatient from 21.11.2013 to 14.12.2013 in the Hospital. The accident occurred only due to the rash and negligent driving of the first respondent and the second respondent is the insurer of the vehicle involved in the



accident. Therefore, he claimed compensation against both the respondents.

4.The respondents filed separate counter statements and denied the averments made by the appellant/claimant in the claim petition. The respondents submitted that it is the appellant who suddenly crossed the road and the accident occurred only due to his negligence. The accident did not occur due to the rashness and negligence of the first respondent. The first respondent submitted that the vehicle is insured with the second respondent and therefore, the second respondent alone is liable to pay compensation. The second respondent submitted that the first respondent did not have any valid driving licence and the second respondent is not liable to pay compensation.

5.Before the Tribunal, the appellant/claimant was examined as P.W.1 and one Dr.Ramaguru, was examined as P.W.2 and marked 9 documents as Exs.P.1 to P.9. The respondents did not let in any oral and documentary evidence.

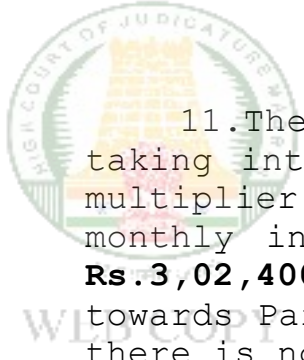
6.The Tribunal, considering the pleadings, oral and documentary evidence, Ex.P1-F.I.R., evidence of P.W.1-claimant, came to the conclusion that the accident occurred only due to the rash and negligent driving of the first respondent. Considering the nature of the injuries suffered by the appellant, the Tribunal awarded a total sum of Rs.3,77,200/-(Rupees Three Lakhs Seventy Seven Thousand Two Hundred only) as compensation.

7.Aggrieved against the said award, the Appellant/claimant has filed the present Civil Miscellaneous Appeal. The respondents have not filed any appeal challenging the award of the Tribunal.

8.The only issue to be decided in the appeal, is whether the compensation awarded by the Tribunal is meagre or just compensation.

9.I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 & 2 and also perused all the materials available on record.

10.It is seen from the records that at the time of accident, the appellant was working as Temporary Conductor in Tamil Nadu State Transport Corporation at Tirunelveli and was earning Rs.7,500/-as monthly income. The appellant has not produced any document to prove that he was earning Rs.7,500/- per month. He has produced the document to show that he was working as Temporary Conductor in Tamil Nadu State Transport Corporation. In the circumstances, the Tribunal has fixed the monthly income of the appellant at Rs.4,500/- and the same is in consonance with various Judgments of this Court and Hon'ble Apex Court. In view of the well settled judicial pronouncement, the contention of the learned counsel for the appellant that the Tribunal ought to have fixed the monthly income of the appellant at Rs.6,000/-(Rupees Six Thousand Only) has no force and the same is untenable.



11. The Tribunal accepted the contention of the appellant and taking into consideration the evidence of the Doctor applied the multiplier. In the circumstances, the Tribunal fixed the notional monthly income of appellant as Rs.4,500/- and awarded a sum of **Rs.3,02,400/-** (Rupees Three Lakhs Two Thousand Four Hundred Only) towards Partial permanent disability and the same is confirmed and there is no reason to modify the said amount.

12. Taking into consideration that the appellant was taking treatment from 21.11.2013 to 14.12.2013. A sum of Rs.15,000/- (Rupees Fifteen Thousand only) awarded by the Tribunal towards pain and sufferings, which is on the lower side, is enhanced to a sum of **Rs.75,000/-** (Rupees Seventy Five Thousand only).

13. Further, a sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded by the Tribunal towards future prospects, is on the lower side and therefore, the same is enhanced to a sum of **Rs.30,000/-** (Rupees Thirty Thousand only).

14. Similarly, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards attendant Charges is very meagre and therefore, a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) is awarded by this Court.

15. Further, the Tribunal awarded only a sum of Rs.10,000/- (Rupees Ten Thousand only) towards Nutrition and hence, this Court awards a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only), under the said head.

16. Similarly, a sum of Rs.13,500/- (Rupees Thirteen Thousand Five Hundred only) was awarded towards Loss of income during the treatment period and the same is confirmed.

17. Further, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards Transportation and a sum of Rs.6,300/- towards Medical expenses and same are confirmed.

18. The rate of interest awarded by the Tribunal at 9% per annum is confirmed.

19. Accordingly, the appellant-claimant is entitled to a sum of **Rs.4,72,200/-** (Rupees Four Lakhs Seventytwo Thousand Two hundred only) along with interest at the rate of 9% per annum from the date of petition till date of realisation and proportionate costs.

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



WEB COPY

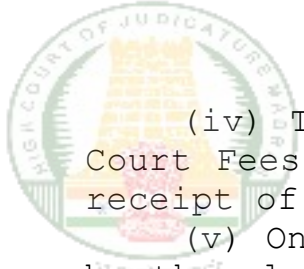
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability (34%)	3,02,400	3,02,400	confirmed
2.	For loss of income during treatment period	13,500	13,500	confirmed
3.	For Loss of Transportation	5,000	5,000	confirmed
4.	For Nutrition	10,000	25,000	enhanced
5.	For attendant charges	5,000	15,000	enhanced
6.	For Pain and suffering	15,000	75,000	enhanced
7.	For Future prospects	20,000	30,000	enhanced
8.	For Medical Expenses	6,300	6,300	confirmed
	Total	Rs.3,77,200	Rs.4,72,200	By enhancing a sum of Rs.95,000/-

16. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.3,77,200/- (Rupees Three Lakhs Seventy Seven Thousand and Two Hundred only) to a sum of **Rs.4,72,200/-** (Rupees Four Lakhs and Seventy Two Thousand and Two Hundred only) along with interest at the rate of 9% per annum from the date of petition till date of realisation and proportionate costs;

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

(iii) The second respondent-Insurance is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.19 of 2014 on the file of the Motor Accidents Claims Tribunal - cum - Special Subordinate Court, Tirunelveli within a period of **eight weeks** from the date of receipt of a copy of this judgment;



(iv) The appellant-claimant is directed to pay the additional Court Fees, if any, within a period of **two 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 his 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(CS-I)

/True copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal - cum -
Special Subordinate Judge, Tirunelveli.

+1 cc to Mr.T.Selvakumaran , Advocate in SR.No. 17708

+1 cc to Mr.J.S.Murali , Advocate in SR.No. 17528

am

AE/KP/SAR4/13.04.2017/5P/4C

C.M.A. (MD) No.242 of 2017
24.03.2017