



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 1277 of 2014

Thangaprakasam

... Appellant / Petitioner

Vs.

1. N.Subramanian

2. The Branch Manager,
National Insurance Company Ltd,
Jerome Building first floor,
Fort railway Station road,
Trichy.

3. The Managing Director,
M/s.Indian Commerce & Industries Company (P) Ltd,
New No.27, old No.29 Broadway, Chennai.

4. HDFC General Insurance Company Ltd,
Sixth floor,
Leela Business Park,
Antheri Kurla road, Antheri(East),
Mumbai 400057.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 11.09.2014 made in M.C.O.P.No.40 of 2010 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Pudukottai.

For Appellant : Mr.R.Devaraj

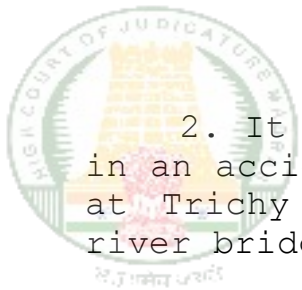
For R-1 & R-3 : No Appearance

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

For R-4 : Mrs.K.R.Shivashankari
for M/s.Srinivasa Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award, dated 11.09.2014 made in M.C.O.P.No.40 of 2010 by Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Pudukottai.



2. It is a case of injury sustained by the appellant/claimant, in an accident, which took place on 14.11.2008 at about 8.45 a.m., at Trichy to Madurai main road near Manikandam Mattaparaipatti river bridge.

3. It is the case of the injured/claimant before the Tribunal that when he was travelling as a pillion rider along with one Xavier in a Herohonda motorcycle bearing registration No.TN 04 Q 8014 from Trichy to Viralimalai at Madurai road, when they reached Manikandam Mattaparaipatti river bridge, the two-wheeler TVS XL bearing registration No.TN 48 J 9857, which came from west-east direction was driven by its rider in a rash and negligent manner and dashed against the Herohonda motorcycle and in the said accident, the injured sustained grievous injuries.

4.The injured claimant filed an application in M.C.O.P.No.40 of 2010, on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Pudukottai, seeking compensation.

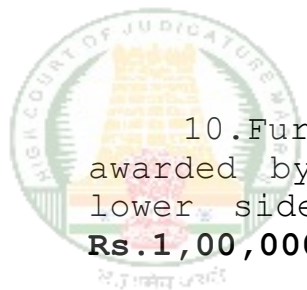
5. Before the Tribunal, the injured/claimant examined three witnesses as P.Ws.1 to 3 and marked twelve documents as Ex.P.1 to Ex.P.12. The respondents did not let in any oral or documentary evidence before the Tribunal.

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 first respondent and therefore, held that the first and second respondents are jointly and severally liable to pay compensation of Rs.4,49,000/-.

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.3-Doctor.The Doctor had issued the Disability Certificate under Ex.P12 assessing the partial permanent disability at 45% and for which, the Tribunal awarded Rs.90,000/- (45 X 2000) for disability. 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 a sum of Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand Only), towards disability.



10. Further, the sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards pain and suffering, is on the lower side and therefore, the same is enhanced to a sum of **Rs.1,00,000/-** (Rupees One Lakh only).

11. 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.25,000/-** (Rupees Twenty Five Thousand only).

12. 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.25,000/-** (Rupees Twenty Five Thousand only).

13. Similarly, the Tribunal has not awarded any compensation towards attendant charges. Therefore, a sum of **Rs.25,000/-** (Rupees Five Thousand only) is awarded by this Court.

14. The compensation granted at Rs.3,39,000/- towards medical expenses on the basis of Exs.P4 to 6 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.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For medical expenses	3,39,000	3,39,000	confirmed
2.	For disability	90,000	1,35,000	enhanced
3.	For Transportati on	5,000	25,000	enhanced
4.	For extra nourishment	5,000	25,000	enhanced
5.	For pain and suffering	10,000	1,00,000	enhanced
6.	For attendant charges		25,000	awarded
	Total	Rs.4,49,000	Rs.6,49,000	By enhancing a sum of Rs.2,00,000/-



16. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.4,49,000/-** (Rupees Four Lakhs and Forty Nine Thousand only) to a sum of **Rs.6,49,000/-** (Rupees Six Lakhs and Forty Nine 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.6,49,000/-** (Rupees Six Lakhs and Forty Nine 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; and

(iii) The appellant is directed to pay the Court fee before withdrawing the award amount before the Tribunal, as ordered by this Court in M.P(MD)No.1 of 2014. No Costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To,

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

+1cc to Mr.R.Devaraj, Advocate Sr.No.68867
+1cc to Mr.J.S.Murali, Advocate Sr.No.69405
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.68932

PM

VB/KK/SAR3/27/10/2017/4P/6C

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