



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1296 of 2014

Rajendran ... Appellant / Petitioner

Vs.

1. N.Esakkipandi

2. The Divisional Manager,
New India Assurance Company Ltd.,
Tiruvananthapuram Road,
Palayamkottai,
Tirunelveli - 2.

... Respondents / Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.541 of 2008, dated 12th day of August 2014 on the file of the Motor Accident Claims Tribunal / Additional Sub-Judge, Tirunelveli.

For Appellant	: Mr.U.Minnavadi
For R-2	: Mr.S.Natarajan
For R-1	: No appearance

J U D G M E N T

The injured claimant has filed this appeal seeking enhancement of the compensation awarded to him.

2. The claimant was an agriculturalist by avocation. On 20.03.2008, while he was riding a two wheeler bearing Registration No.TN-76-Y-5387, a power tiller insured with the second respondent herein hit him. In the resultant accident the claimant suffered very severe fracture on his left leg. The Doctor assessed the physical disability as 50%, which is permanent in nature. The Tribunal awarded only a sum of Rs.2,05,000/-.

3. Contending that the same is inadequate, the claimant has filed this Civil Miscellaneous Appeal.

4. The learned counsel appearing for the claimant/appellant herein would point out that the claimant had taken treatment in a private hospital. He was an inpatient from 20.03.2008 to

02.04.2008. He had continued to take treatment in the said hospital. The plate inserted in his left leg is yet to be removed. Since medical bills were not filed, no compensation was awarded under the head of Medical expenses. He also placing reliance on the Honourable Supreme Court reported in **2012 ACJ 2694 (K.Suresh v. New India Assurance Co. Ltd. And another)** pointed out that apart from awarding disability compensation, the Tribunal must also award a compensation for loss of earning capacity. He, therefore, pointed out that the compensation payable to the claimant will have to be enhanced.

5. The learned counsel appearing for the insurer contended that the Tribunal rightly quantified the compensation payable to the claimant and the same need not to be enhanced.

6. The learned counsel appearing for the appellant further contended that the claimant is unable to attend to his avocation and he is carrying out his agricultural work by employing labour.

7. Therefore the compensation payable to the claimant will have to be re-worked as under:

Sl.No	Heads	Amount in Rupees
1.	For Personal Disability	Rs. 1,50,000/-
2.	Medical expenditure including future expenses	Rs. 1,00,000/-
3.	Loss of income	Rs. 48,000/-
4.	Pain and sufferings	Rs. 30,000/-
5.	Transportation charges	Rs. 5,000/-
6.	Extra nourishment	Rs. 5,000/-
7.	Attender charges	Rs. 5,000/-
	Total	Rs. 3,43,000/-

8. The compensation awarded by the Tribunal is enhanced from Rs.2,05,000/- to Rs.3,43,000/-. Therefore, the award dated 12.08.2014, made in M.C.O.P.No.541 of 2008, on the file of the Motor Accident Claims Tribunal / Additional Sub-Judge, Tirunelveli, is modified accordingly.

9. The second respondent insurance company is liable to deposit the said sum of Rs.3,43,000/- with interest at 7.5% per annum and costs from the date of petition till the date of realization within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the entire amount, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.



10. This Civil Miscellaneous Appeal stands partly allowed.
No costs.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Additional Sub-Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.U.Minnavadi, Advocate Sr.No.94018
+1cc to Mr. S.Natarajan, Advocate Sr.No.94180

KMI

VB/PN/SAR2/18.07.2018/3P/6C

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