



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.M.A(MD)Nos.38 of 2017 and 992 of 2016
and M.P(MD)No.304 of 2017**In C.M.A(MD)No.38 of 2017:**

The Divisional Manager,
248 B, Rekha Towers, Kamaraj Salai,
Madurai.
Now having office at
The New India Assurance Company Ltd.,
CMTS Bhavan Building,
70 Feet Road, Ellis Nagar,
Madurai-625 016,
Madurai District.

... Appellant/2nd Respondent**Vs.**

1.K.N.Radhakrishnan
2.A.Nithya

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order passed in M.C.O.P.No.1146 of 2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Madurai dated 08.03.2016.

For Appellant : Mr.S.Sarvagan Prabhu
For R-1 : Mr.A.Liaket Ali
For R-2 : Mr.J.S.Murali

In C.M.A(MD)No.922 of 2016:

Radhakrishnan

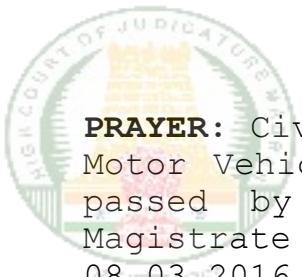
... Appellant/Petitioner

Vs.

1. A.Nithya

2. The New India Assurance Company Ltd.,
Represented through its Divisional Manager,
having office at:
248/B, Rekha Towers, Kamaraj Salai,
Madurai.

... Respondents/Respondents



PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the Judgment and decretal order passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Madurai in M.C.O.P.No.1146 of 2012 dated 08.03.2016.

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For Appellant : Mr.A.Liaket Ali
For R-2 : Mr.S.Sarvagan Prabhu
For R-1 : Mr.J.S.Murali

COMMON JUDGMENT

In C.M.A. (MD)No.992 of 2016:

This Civil Miscellaneous Appeal is filed by the claimant against the award made in M.C.O.P.No.1146 of 2012 dated 08.03.2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Madurai.

In C.M.A. (MD)No.38 of 2017:

This Civil Miscellaneous Appeal is filed by the Insurance Company against the award made in M.C.O.P.No.1146 of 2012 dated 08.03.2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Madurai.

2. It is the case of injury caused due to the accident that took place on 25.12.2010 at 4 p.m when the claimant was checking J.C.B Escalator bearing Registration No.PY-01-V-3928 whether there was oil leakage or not, the driver wrongly moved the vehicle and therefore, the hand of the bucket has fallen on the left leg due to which the claimant sustained fracture in his left leg.

3. Before the tribunal, on the side of the claimant, four witnesses were examined as P.W. 1 to P.W.4 and Exs.P1 to P.18 were marked and on the side of the respondents, two witnesses were examined as R.W.s 1 to 2 and Exs.R1 to R5 were marked.

4. Though the learned counsel for the appellant/ claimant questioned the quantum of compensation on various grounds, he has specifically argued that the Tribunal erroneously has taken 30% disability instead of 34%. He would further submit that doctor is the competent authority to assess the disability and considering the gravity of the disability, the doctor has assessed disability at 34% and there cannot be any dispute over it. Further, the Tribunal awarded only Rs.2000/- for each percentage of disability, which is very low. 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.

<https://hcservices.ecourts.gov.in/hcservices/>

5. Heard the learned counsel appearing for the claimant and the learned counsel appearing for the Insurance Company, who



vehemently opposed for enhancement of compensation.

6. Considering the above stated facts, the amount awarded under the head 'for disability' is modified by calculating disability at 34% and by awarding Rs.3000/- for each percentage of disability, which comes to Rs. 1,02,000/- (34 X 3000). In all other heads, the amounts awarded by the Tribunal stands unaltered.

7. After modification, the award amount is enhanced in the following manner:

Heads	Amount
For Disability (34% X 3,000)	Rs. 1,02,000/-
For Loss of earning 1 month	Rs. 4,500/-
For Medical Bills	Rs. 1,21,000/-
Pain and suffering	Rs. 10,000/-
Extra Nourishment	Rs. 5,000/-
Transport to Hospital	Rs. 500/-
Damages to cloths and articles	Rs. 500/-
Total	Rs. 2,43,500/- rounded off to Rs.2,45,000/-

8. The second respondent Insurance Company is directed to deposit the entire award amount, less the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of copy of this judgment. On such deposit being made, the claimant is entitled to withdraw the entire award amount along with proportionate interest and costs, without filing formal petition.

9. In the result, this Civil Miscellaneous Appeal in C.M.A.(MD) No.38 of 2017 is partly allowed and the award passed in M.C.O.P.No.1146 of 2012 dated 08.03.2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Madurai, is hereby modified. No costs. Consequently, connected C.M.P.(MD) No.304 of 2017 is closed.

10. This Court is not inclined to allow the appeal filed by the Insurance company in C.M.A.No.992 of 2016 and therefore, the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/



To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Madurai.

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+ 2 CC TO Mr.A.LIAKET ALI, ADVOCATE IN SR No. 68142, 68141
+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 68459

CM

TE/JC/SAR-I : 23/08/2017 : 4P/5C

C.M.A(MD)Nos.38 of 2017 and 992 of 2016 and
M.P(MD)No.304 of 2017
26.07.2017