

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 20.09.2017****CORAM**

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A(MD)No.436 of 2017**

Elango

... Appellant/Petitioner

Vs.

1.Ravichandran

2.New India Assurance Company Limited,
Rep by the Divisional Manger,
Thanjavur Market Road,
Thanjavur Town and Munsif

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.220 of 2013, dated 16.03.2017 on the file of the Motor Accident Claims Tribunal-cum-Sub-Court, Pattukottai.

For Appellant : Mr.K.Bhaskaran

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

For R-1 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award of the Motor Accident Claims Tribunal cum Sub Court, Pattukottai passed in M.C.O.P.No.220 of 2013, dated 16.03.2017.

2. It is the case of injury sustained by the injured/claimant in an accident, which took place on 05.05.2012 at about 23.30 hours near Thondarampattu.

3. It is the case of the claimant before the Tribunal that on the date of accident, when the injured was travelling along with four others in a Car bearing Registration No.TN 50 W 1551, the driver of the car, drove the vehicle in a rash and negligent manner and dashed against the bricks, which were kept on the roadside, near Thondarampattu and caused the accident and in the said accident, the injured sustained multiple grievous injuries all over the body and lost some of his teeth.



4. The claimant filed application in M.C.O.P.No.220 of 2013 on the file of the Motor Accident Claims Tribunal-cum-Sub-Court, Pattukottai, seeking compensation.

5. Before the Tribunal, the appellant/claimant examined two witnesses as P.W.1 and P.W.2 and marked nine documents as Ex.P.1 to Ex.P.13. On the side of the respondents, they did not let in any oral and documentary evidence.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the car, belonging to the first respondent and insured with the second respondent/Insurance Company and therefore directed the second respondent/Insurance Company to pay a sum of Rs.2,76,000/- to the claimant as compensation.

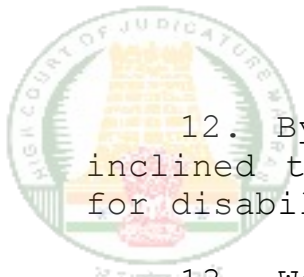
7. Against which, the appellant/claimant filed the present appeal seeking enhancement of compensation.

8. The learned counsel for the appellant/claimant would submit that the Tribunal has failed to note that the injured is suffering from permanent physical disability of 60% and he became weak, but without considering the said fact, the Tribunal fixed the disability at 15%. Further, as per Ex.P.10-medical bills, the claimant has spent a sum of Rs.5,67,700/- towards medical expenses and the Tribunal has failed to note the physical disability and loss of future earning. Therefore, the compensation awarded by the Tribunal is on the lower side and the same is to be enhanced.

9. The learned counsel appearing for the second respondent/Insurance Company submitted that to prove the medical bills, the Doctor was not examined and therefore, the compensation awarded by the Tribunal is a just and reasonable compensation and the same does not warrant interference.

10. This Court heard the submissions made on either side and perused the materials available on record.

11. As rightly contended by the learned Counsel for the appellant, while P.W.2 - Doctor determining the disability of the injured claimant at 60%, the Tribunal has erred in reducing the same to 15%. Hence, this Court takes the disability of the appellant as 60%, as determined by P.W.2 - Doctor. In the judgment of this Court in **National Insurance Company Ltd. rep. by its Branch Manager v. G.Ramesh and another** reported in 2013 (2) **TMAC 583**, for each percentage of disability, a sum of Rs.3,000/- has been awarded.



12. By relying upon the said decision, this Court is also inclined to grant a sum of Rs.3,000/- for 1% disability. Hence, for disability, a sum of Rs.1,80,000/-(Rs.3000 x 60) is awarded.

13. With regard to medical bills, it is submitted by the learned counsel for the second respondent/Insurance Company that to prove the medical bills, the Doctor was not examined. But, this Court is of the view that it is not the practice of the Court to call for the Doctor to give evidence on the medical bills and the medical bills are that of Appolo Hospital and the medical bills have been marked before the Tribunal.

14. Therefore, considering the injuries sustained by the injured/claimant and the expenditure incurred, this Court is inclined to award Rs.5,67,700/- towards medical bills. The compensation awarded by the Tribunal under other heads are confirmed.

15. This Court modifies the award of the Tribunal by enhancing the compensation as under:-

S.No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1	For partial disability	45,000	1,80,000	Enhanced
2	For Teeth plantation	21,000	21,000	confirmed
3	For Medical bills	50,000	5,67,700	Enhanced
4	For Future medical expenses	50,000	50,000	confirmed
5	For Pain and sufferings	60,000	60,000	confirmed
6	For Nutritious foods	30,000	30,000	confirmed
7	For Transportation	20,000	20,000	confirmed
	Total	2,76,000	9,28,700	By enhancing Rs.6,52,700

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, by enhancing the award of the Tribunal from Rs.2,76,000/- (Rupees Two lakhs and seventy six thousand only) to a sum of Rs.9,28,700/- (Rupees Nine Lakhs Twenty Eight Thousand and Seven Hundred Only) along with interest at the rate of 7.5% per annum from the date of petition till realisation and proportionate costs;



(ii) The second respondent/Insurance Company is directed to deposit the entire award amount 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. No Costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Pattukottai.

COPY TO

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.J.S.Murali, Advocate Sr.No.80838
+1cc to Mr.K.Bhaskaran, Advocate Sr.No.80330

DSK/PM

VB/KP/SAR4/12/10/2017/4P/5C

C.M.A(MD)No.436 of 2017
20.09.2017