



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1458 of 2016

Balakrishnan ... Appellant/Petitioner
Vs.

1.Mahesh

2.The United India Insurance Company,
Kumbakonam,
Rep.by its Divisional Manager,
South Main Street,
Thanjavur.

3.Sri Muruga Vilas Bus Service,
No.A,14, State Bank Colony,
Kumbakonam, Thanjavur.

4.M/s.The National Insurance Company,
Mumbai,
Rep by its Divisional Manager,
Manojiappa Lane,
South Main Street,
Thanjavur.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 27.07.2010 passed by the Additional District Court (Fast Track Court) cum Motor Accidents Claims Tribunal, Thanjavur in MCOP.No. 92 of 2008 and to fix Rs.1,08,000/- towards loss of income capacity in addition to the amount of Rs.61,000/- already fixed.

For Appellant : Mr.P.Sesubalan Raja
For R-1 & R-3 : No Appearance
For R-2 : Mr.C.Jawahar Ravindran
For R-4 : Mr.A.S.Mathialagan

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award passed by the Additional District Court (Fast Track Court) cum Motor Accidents Claims Tribunal, Thanjavur in MCOP.No. 92 of 2008 dated 27.07.2010.

2. It is the case of an accident causing injuries, which took place on 21.07.2007 at about 11.00 hours at Thanjavur near Palliagraharam by-pass road.



3. It is the case of the claimant before the Tribunal that on the date of accident, when the petitioner was proceeding in the third respondent's vehicle to Kumbakonam, near Palliagraharam - Ammenpettai by pass road, the driver of the first respondent drove the vehicle in a rash and negligent manner and dashed against the claimant. As a result of the accident, he sustained multiple grievous injuries and his right fingers sustained permanent disability.

4. The claimant filed an application in M.C.O.P.No. 92 of 2008 on the file of the Additional District Court (Fast Track Court) cum Motor Accidents Claims Tribunal, Thanjavur, seeking compensation.

5. Before the Tribunal, the claimant examined two witnesses as P.W.2 and P.W.3 and marked ten documents as Ex.P.1 to Ex.P.10. 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 rash and negligent driving of the driver of the first respondent and therefore directed the first respondent to pay a sum of Rs.61,000/- to the claimant as compensation.

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

8. The learned counsels appearing for the second and fourth respondents submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

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

10. The learned counsel for the appellant/claimant would submit the compensation awarded by the Tribunal towards the disability is very low and the Tribunal ought to have directed the second respondent to pay compensation to the appellant/claimant and then recover the same from the first respondent and the Compensation awarded by the Tribunal under others heads are on the lower side and hence, the compensation has to be enhanced.

11. As rightly contended by the learned counsel for the appellant, the Tribunal has erred in awarding Rs.1,500/- for 1% disability. 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) TNMAC 583, for each percentage of disability, a sum of Rs.3,000/- has been awarded. 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.90,000/-

(Rs.3000x30) is awarded. The Tribunal has awarded Rs.6,000/- towards pain and suffering and considering the injuries sustained and the treatment the claimant had undergone, Rs.20,000/- is awarded towards the same. The Tribunal has awarded Rs.1,000/- towards transportation and the same is enhanced to Rs.5,000/-. The compensation under other heads awarded by the Tribunal is confirmed.

12. 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 disability	45,000	90,000	Enhanced
2	Pain and sufferings	6,000	20,000	Enhanced
3	Transportation	1,000	5,000	Enhanced
4	Extra nourishment	4,000	4,000	Confirmed
5	Medical expense	2,000	2,000	Confirmed
6	Loss of income during treatment	3,000	3,000	confirmed
	Total	61,000/-	1,24,000/-	By enhancing Rs.63,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed, by enhancing the award of the Tribunal from Rs.61,000/- (Rupees Sixty one thousand only) to a sum of Rs.1,24,000/- (Rupees One lakh twenty four 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 first respondent 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. The appellant is directed to pay necessary additional Court fee, within a period of two weeks from the date of receipt of a copy of this judgment, if any.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar



To

The Additional District Court/
Fast Track Court cum
Motor Accident Claims Tribunal,
Thanjavur

Copy to:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.A.S.Mathialagan, Advocate, SR.No.80059

+One cc to Mr.P.Sesubalan Raja, Advocate, SR.No.79990

+One cc to Mr.C.Jawahar Ravindran, Advocate, SR.No.80126

dsk

RL/6C/4P/KK/SAR4/5/12/2017

C.M.A (MD) No.1458 of 2016

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