



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.500 of 2017

WEB COPY

Senthil Kumar

...Appellant/Petitioner

Vs.

1.Thangavel

2.The Branch Manager,
United India Insurance Company,
No.2, Bhuvaneshwari Complex,
Dr.Sankaran Road,Namakkal.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the judgment and decree of dated 30.12.2015 made in MCOP No.90 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant: Mr.S.Siva Thilakar,

For R-1 : No Appearance

For R-2 : Mr.A.S.Mathialagan

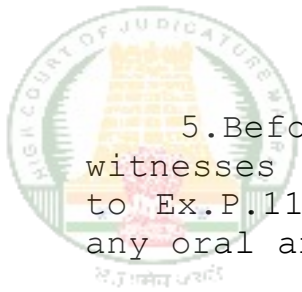
J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thanjavur at Kumbakonam, passed in M.C.O.P.No. 90 of 2015, dated 30.12.2015.

2. It is the case of an accident causing injury, which took place on 23.01.2011 at about 05.00 hours on Asoor by pass road near Vanaveli Muneeswarankoil.

3. It is the case of the claimant before the Tribunal that when the petitioner was riding his bullock cart on the extreme left side on Asoor by pass main road near Vanaveli Muneeswaran Koil, from east to west, the driver of the lorry bearing Registration No.TN 28 AC 8287, drove the vehicle in a rash and negligent manner and dashed behind the bullock cart and as a result, the petitioner sustained severe and grievous injuries, subsequently, had taken treatment at various hospitals.

4. The claimant filed an application in M.C.O.P.No.90 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam, seeking compensation.



5. Before the Tribunal, the appellant/claimant examined six witnesses as P.W.1 to P.W.6 and marked eleven documents as Ex.P.1 to Ex.P.11. 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 lorry bearing registration No.TN 28 AC 8287 and therefore directed the second respondent to pay a sum of Rs.1,03,000/- to the claimants as compensation.

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

8. The learned counsel appearing for the second respondent/ Insurance Company 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 that the Tribunal ought to have awarded Rs.3,000/- for 1% disability and Rs.25,000/- towards nutritious food and therefore, the compensation awarded by the Tribunal has to be enhanced.

11. Since the disability of the petitioner was assessed at 28%, Rs.84,000/- (Rs.3,000/- for 1% accordingly $Rs.3000 \times 28 = Rs.84,000$) is awarded as compensation towards disability and Rs.5,000/- is awarded towards nutritious food. 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.	Towards disability	56,000	84,000	Enhanced
2.	Loss of income for 3 months	9,000	9,000	confirmed
3	For pain and sufferings	20,000	20,000	confirmed
4	Transportation Expenses	5,000	5,000	confirmed
5	Attendant charges	1,000	1,000	confirmed
6	For future expenses	10,000	10,000	confirmed
7	Damages to articles	2,000	2,000	confirmed
	Total	1,03,000	1,31,000	By enhancing Rs.28,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed, by enhancing the award of the Tribunal from Rs.1,03,000/- (Rupees one lakh and three thousand only) to a sum of Rs.1,31,000/- (Rupees one lakh and thirty one 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 with accrued interests and costs, less the amount already deposited, if any, within a period of four 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(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate, Motor Accident Claims Tribunal
Thanjavur @ Kumbakonam.

+1cc to M/S.A.S.MATHIYALAGAN, Advocate SR.No.79379

dsk

JS/SKN-RSK/SAR2:05.10.2017:3P-3C

C.M.A(MD)No.500 of 2017

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