



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) Nos.611 of 2017

and

C.M.P. (MD) No.6391 of 2017

Selvaganesan

... Appellant/Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Bye Pass Road,
Madurai-10.

2. V.Chitharthan

3. The Branch Manager,
M/s.Royal Sundaram Alliance
Insurance Company Limited,
A.D.P. Tower, 5th Floor,
12-A, Bye Pass Road,
Madurai-20.

... Respondents/Respondents

(No award passed and no claim as against the
1st Respondent herein and given up)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.1430 of 2013 on the file of the Chief Judicial Magistrate, Madurai, dated 01.04.2016.

For Appellant : Mr.K.Kumarvel

For Respondents : Mr.S.Srinivasa Raghavan
for R.3

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgement and Decree made in M.C.O.P.No.1430 of 2013, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Madurai, dated 01.04.2016.



2. The brief facts of the case are as follows:

It is a case of injury, in which the accident took place on 10.05.2011 at about 04.30 p.m. When the petitioner was riding in a two-wheeler bearing Registration No.TN-22-A-7660 in Madurai-Alagarkovil main road, proceedings from North to South, a Scorpio Car bearing Registration No.TN-07-BF-6399 belonged to the second respondent and insured with the third respondent-Insurance Company, came in a rash and negligent manner and dashed against the two wheeler and due to the said impact, the petitioner/claimant sustained grievous injuries and immediately after accident, he was taken to Madurai Government Rajaji Hospital and afterwards, he was admitted in Madurai Devadoss Hospital and due to the said accident, there is an amputation in his right leg and plates were implanted to join the bones. At the time of accident, the petitioner/claimant was aged about 42 years and he was earning a sum of Rs.600/- by working as Welding Mechanic. Hence, he filed an application in M.C.O.P.No.1430 of 2013, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Madurai, claiming a sum of Rs.12,00,000/- as compensation.

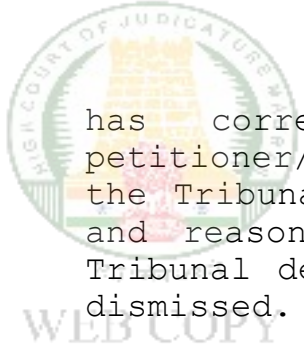
3.Before the Tribunal, on the side of the claimant, three witnesses viz., P.W.1 to P.W.3 were examined and twelve documents viz., Exs.P.1 to P.12 were marked and Ex.X.1 was also marked for the claimant and on the side of the respondents, one witness viz., R.W.1 was examined and no document was marked on the side of the respondents.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and respondents and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of both vehicles and fixed the contributory negligence to 75% and 25% to the car and the two wheeler respectively and arrived at compensation of Rs.10,75,350/- and directed the third respondent Insurance Company to pay 75% of their negligence amount i.e., a sum of Rs.8,06,513/- to the petitioner/claimant as compensation.

5. Against which, the appellant/claimant filed the present appeal on the ground of negligence as well as quantum of compensation.

6. The learned counsel appearing for the appellant/ claimant would submit that the Tribunal has committed an error in fixing 25% of negligence on the claimant and the amounts awarded under various heads are also very meagre. Hence, he prays for interference to the finding and the award passed by the Tribunal.

7. The learned Counsel for the third respondent Insurance Company would submit that when the petitioner/claimant was trying to overtake a bus, the accident was occurred and hence, the Tribunal



has correctly fixed 25% contributory negligence to the petitioner/claimant and based on the oral and documentary evidences, the Tribunal has correctly come to the conclusion and awarded just and reasonable compensation and hence, the award passed by the Tribunal deserves no interference and hence, this appeal has to be dismissed.

8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. A perusal of the finding given by the Tribunal, it is seen that while the petitioner/claimant was trying to overtake the bus near the bus stop, the accident was occurred and that accident was occurred in the middle of the road and hence, the Tribunal has correctly fixed the negligence at 25% towards the claimant and hence, this Court is not inclined to interfere with the finding and the fixation of liability on both vehicles. Hence, the finding of the Tribunal with regard to liability is hereby confirmed.

10. As far as the quantum of compensation is concerned, this Court is of the view that it is very meagre. Due to the accident, there is an amputation of right leg over and above the knee. The petitioner/claimant was a welder and since he is a skilled labour, the notional income taken by the Tribunal is very low. The Honourable Apex Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, determined the monthly income at Rs.6,500/- for a vegetable vendor, even in the absence of any definite material about the income. Hence, this Court is inclined to enhance the monthly income as Rs.6,500/- per month and by adding 30% of the monthly income for future prospects and considering his 80% permanent disability and adopting the correct multiplier as per **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)** case, arrived the loss of income as follows:

Rs.6500/-+Rs.1,950/-x12x14x80/100 = Rs.11,35,680/-

Considering 80% disability of the petitioner/claimant, this Court is of the view that the amount awarded by the Tribunal towards pain and sufferings is very low, hence, this Court is inclined to enhance the same to a sum of Rs.1,00,000/-. Considering the nature of injuries sustained by the petitioner/claimant, this Court is of the view that the amount awarded towards loss of amenities is very meagre. Hence, this Court is inclined to enhance the same to Rs.50,000/-. Likewise, considering the period of treatment, the amount awarded towards extra nourishment, transportation and for attendant charges are very meagre. Hence, this Court is inclined to enhance the same to Rs.25,000/-; Rs.25,000/- and Rs.30,000/- respectively. The amounts awarded by the Tribunal under other heads are hereby confirmed.

11. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:



S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For loss of income	6,30,000	11,35,680	enhanced
2	For pain and suffering	50,000	1,00,000	enhanced
3.	For Medical Bills of Ex.P.5 & P.8	82,000	82,000	confirmed
4.	For Medical bills	67,350	67,350	confirmed
5.	For damages to clothes and articles	1,000	1,000	confirmed
6.	For Transport charges	5,000	25,000	enhanced
7.	For Extra nourishment	10,000	25,000	enhanced
8.	For loss of amenities	10,000	50,000	enhanced
9.	For Medical attendant	20,000	30,000	enhanced
10.	For Future Medical expenses for fixing artificial leg	2,00,000	2,00,000	
	Total	Rs.10,75,350	Rs.17,16,030	Enhanced by a sum of Rs.6,40,680

After deducting 25% of contributory negligence, the appellant/claimant is entitled to a compensation of Rs.12,87,022/- (Rs.17,16,030-Rs.4,29,008)

12. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.8,06,513/- to Rs.12,87,022/-, dated 01.04.2016, passed in M.C.O.P.No.1430 of 2013, on the file of the Motor Accident Claims Tribunal cum the Chief Judicial Magistrate, Madurai. The third respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the appellant/claimant is permitted to receive the entire award amount, with accrued interests and costs without filing any formal petition before the Tribunal. No Costs. Consequently, the connected Miscellaneous Petition is closed. The



appellant/claimant is directed to pay necessary additional Court fee, if any.

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Sd/-

Assistant Registrar (CO)

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Madurai.

+ 1 CC TO Mr.K.KUMARAVEL, ADVOCATE IN SR No. 80227
+ 3 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 80037

SSL

TE/KK/SAR-2 : 12/02/2018 : 5P/6C

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