



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.36 of 2014

and

M.P.(MD)No.1 of 2014

M.Kannan

... Appellant/Petitioner

Vs.

1. Rajasekaran

2. The Oriental Insurance Company Limited,
Represented by its Divisional Branch Manager,
II Floor, 206, West Main Street,
Madurai 625 001.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against Judgment and decree made in M.C.O.P.No.304 of 2011 dated 09.10.2013 on the file of the Motor Accident Claims Tribunal/ IV Additional Sub Court, Madurai.

For Appellant	: Mr.P.Prabhakaran
For R-1	: Mr.Rajasekaran
For R-2	: Mr.K.Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award dated 09.10.2013 passed in M.C.O.P.No.304 of 2011, by the Motor Accident Claims Tribunal/ IV Additional Sub-Court, Madurai.

2. It is a case of injury sustained by the claimant in an accident, which took place on 05.01.2010 at 10.30 p.m., at A.V.Bridge, Goripalayam Madurai town.

3. It is the case of the injured claimant before the Tribunal that when he was returning home from his working place by riding his motorcycle bearing registration No.TN 58 E 0821 in a slow speed by observing all the traffic Rules on the extreme left side of A.V. Bridge, the TATA 207 van bearing Registration No.TN 64 A 6223, which came in the same direction was driven by its driver in a rash and negligent manner and dashed against the injured and due to that, the injured was thrown on the platform of the bridge. In the said



accident, the claimant sustained grievous injuries all over the body.

4. The claimant filed an application in M.C.O.P.No.304 of 2011 on the file of the the Motor Accident Claims Tribunal/IV Additional Sub- Court, Madurai, seeking compensation.

5. Before the Tribunal, the appellant/claimant examined two witnesses as P.Ws.1 and 2 and marked thirteen documents as Ex.P.1 to Ex.P.13. The second respondent/Insurance Company did not let in any oral or documentary evidence before the Tribunal.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the TATA 207 van and therefore, directed the second respondent/Insurance Company to pay a sum of Rs.1,30,572/-, as compensation.

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

8. The learned counsel for the appellant/claimant would submit that the victim sustained injuries and he was treated by P.W.2-Doctor. The Doctor had issued the Disability Certificate under Ex.P10 assessing the partial permanent disability at 28% and the Tribunal awarded Rs.44,800/- (28 X 1600) for disability. The learned counsel for the appellant relied on the Judgment rendered in **P.Elangovan vs. S.Murali and two others** reported in **2017 (1) TN MAC 251**, wherein it has been held that a sum of Rs.3,000/- should be fixed for 1% disability.

9.Considering the above submission, this Court fixes a sum of Rs.3,000/- (Rupees Three Thousand Only) for 1% disability and awards a sum of Rs.84,000/- (Rupees Eighty Four Thousand Only), towards disability.

10.Further, the sum of Rs.2,000/- (Rupees Two Thousand only) awarded by the Tribunal towards transportation, is on the lower side and therefore, the same is enhanced to a sum of **Rs.10,000/-** (Rupees Ten Thousand only).

11. Further, the sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards extra nourishment, is on the lower side and therefore, the same is enhanced to a sum of **Rs.10,000/-** (Rupees Ten Thousand only).

12. Further, the sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded by the Tribunal towards extra nourishment, is on the lower side and therefore, the same is enhanced to a sum of **Rs.30,000/-** (Rupees Thirty Thousand only).



13. Similarly, the Tribunal has not awarded any compensation towards attendant charges. Therefore, a sum of **Rs.5,000/-** (Rupees Five Thousand only) is awarded by this Court.

14. Further, the Tribunal has not awarded any compensation towards future medical expenses. Therefore, a sum of **Rs.20,000/-** (Rupees Ten Thousand only) is awarded by this Court and the amount awarded for medical expenses is confirmed.

15. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For partial permanent disability (28%)	44,800	84,000	enhanced
2.	For transportat ion	2,000	10,000	enhanced
3.	For Extra Nourishment	5,000	10,000	enhanced
4.	For medical expenses	58,772	58,772	confirmed
5.	For pain and suffering	20,000	30,000	enhanced
6.	For attendant charges		5,000	awarded
7.	For future medical expenses		20,000	awarded
	Total	Rs.1,30,572	Rs.2,17,772	By enhancing a sum of Rs.87,200/-

16. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,30,572/- (Rupees One Lakh Thirty Thousand Five Hundred and Seventy Two only) to a sum of **Rs.2,17,772/-** (Rupees Two Lakhs Seventeen Thousand Seven Hundred and Seventy Two 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 of **Rs.2,17,772/-** (Rupees Two Lakhs Seventeen Thousand Seven Hundred and Seventy Two only) 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 award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To,

The IV Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

Copy To:-

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

+ 1 CC TO Mr.P.PRABHAKARAN, ADVOCATE IN SR No. 67749
+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 67867

PM
TE/MR-KKR/SAR-I : 24/08/2017 : 4P/5C

C.M.A.No.36 of 2014 and
M.P. (MD) No.1 of 2014
26.07.2017