



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.639 of 2017

K.Murugesan

... Appellant/Claimant

Vs.

1. The State of Tamil Nadu,
Represented by
The District Collector,
Theni District.

2. The Government of Tamil Nadu
Medical Services Section,
District Government Hospital,
Periyakulam,
Periyakulam Taluk,
Theni District.

...Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records relating to the award and decree dated 24.10.2013 passed in MCOP.No.1 of 2013, on the file of the learned Motor Accident Claims Tribunal/Sub Court, Theni and set aside the same thereby modifying the award by enhancing the compensation as prayed for by the claimant.

For appellant : Mr.P.Sivachandran

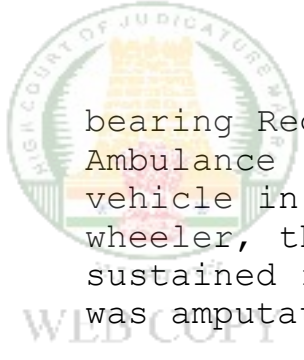
For respondents : Mr.R.Velmurugan
Government Advocate.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the Order and decree in M.C.O.P.No.1 of 2013 dated 24.10.2013 on the file of the Motor Accident Claims Tribunal/Sub Court, Theni.

2. It is the case of an accident causing injuries, which took place on 09.11.2011 at about 18.30 hours, on Theni - Andipatti main road.

3. It is the case of the claimant before the Tribunal that on the date of accident, when the claimant was riding his two wheeler



bearing Registration No. TN-60 U-0772, the driver of the Mahendra Ambulance bearing Registration No. TN-01 G-01137, drove the vehicle in a rash and negligent manner and dashed against the two wheeler, thereby causing accident. As a result of the accident, he sustained multiple grievous injuries, subsequently, his right leg was amputated and took treatment for several days.

4.The claimant filed an application in M.C.O.P.No. 01 of 2013 on the file of the Motor Accident Claims Tribunal (Sub Court), Theni seeking compensation.

5.Before the Tribunal, the claimant examined three witnesses as P.W.1 to P.W.3 and marked sixteen documents as Ex.P.1 to Ex.P.16. On the side of the respondents, one witness was examined as R.W.1 and no document was marked.

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 second respondent and therefore directed the first and second respondents to pay a sum of Rs.5,77,440/-to the claimant as compensation.

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

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

9.The learned Government Advocate appearing for the respondents submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

10.The learned counsel for the appellant/claimant would submit that the Tribunal has erroneously fixed the permanent disability at 60%, whereas the claimant sustained permanent disability of 100%, and the Tribunal ought to have adopted multiplier method for arriving at loss of income. Further, the compensation awarded by the Tribunal under other 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.2,000/- for 1% disability. It would be appropriate to refer to the judgment of this Court in the case of, **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.1,80,000/- (Rs.3000x60) is awarded. The Tribunal has awarded Rs.25,000/- towards pain and sufferings and considering the injuries sustained by the claimant and amputation of his leg, Rs.1,00,000/- is awarded towards the same. The Tribunal has awarded Rs.11,500/- towards transportation, Rs.10,000/- towards extra nourishment and Rs.1,000/- towards loss of amenities and the same is enhanced to Rs.25,000/-, Rs.25,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any compensation towards future medical expenses, considering the artificial leg fixed, this Court awards Rs.25,000/- towards the same. 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	Pain & sufferings	25,000	1,00,000	Enhanced
2	Extra nourishment	10,000	25,000	Enhanced
3	Transportation	11,500	25,000	Enhanced
4	Loss of amenities	1,000	5,000	Enhanced
5	Medical expense	3,83,440	3,83,440	confirmed
6	For fixing artificial leg	26,500	26,500	Confirmed
7	For disability	1,20,000	1,80,000	Enhanced
8	Future medical expense	--	25,000	Awarded
	Total	5,77,440	7,69,940	By enhancing 1,92,500/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, by enhancing the award of the Tribunal from Rs.5,77,440/- (Five lakhs seventy seven thousand four hundred and forty only) to a sum of Rs.7,69,940/- (Rupees Seven lakhs sixty nine thousand nine hundred and forty 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 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 entire award amount with accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

/True Copy/

Sub Assistant Registrar

To,

The Subordinate Judge,
Motor Accident Claims Tribunal, Theni.

+ 1 cc TO Mr.P.Sivachandran , Advocate in SR No. 80183
+1cc to The Special Government Pleader in SR.No.80339

dsk

AE/SKN RSK/SAR1/12.10.2017/4P/4C

C.M.A (MD) No. 639 of 2017
20.09.2017