



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.640 of 2017

Selvaraj ... Appellant / Claimant

Vs.

1. Natarajan

2. The Branch Manager,
Cholamandalam General Insurance Company Ltd.,
1st Floor, Anna Plaza,
5, Covai Road,
Opp. to AKC Petrol Pump,
Karur- 639 002

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decreeal order made in MCOP No.15 of 2012 dated 24.02.2015, by the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant
R-1 set ex-parte
For R-2

: Mr.S.Rajaprabu
: Mr.S.Srinivasa Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award of the Motor Accidents Claims Tribunal-cum- Chief Judicial Magistrate, Thanjavur at Kumbakonam. passed in M.C.O.P.No.15 of 2012 dated 24.02.2015.

2. It is a case of injury sustained by the injured in an accident, which took place on 10.03.2010 at about 2.30 p.m., at Thirumangalakudi Poompugar Road.

3. It is the case of the claimant before the Tribunal that on the date of accident, when the injured was walking on the left side of the road, the lorry bearing registration No.TN 21 AB 2142, which came from the opposite direction was driven by its driver in a rash and negligent manner and dashed against the injured and caused the accident and in the said accident, the injured sustained grievous injuries.



4. The claimant filed an application in M.C.O.P.No.15 of 2012, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam, seeking compensation.

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5. Before the Tribunal, the appellant/claimant examined two witnesses as P.Ws.1 and 2 and marked Six documents as Ex.P.1 to Ex.P.6. The second respondent/Insurance Company did not let in any oral or documentary evidences before the Tribunal.

6. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the driver of the lorry belonging to the first respondent and insured with the second respondent and therefore directed the second respondent/Insurance Company to pay a sum of Rs.1,43,000/-, as compensation.

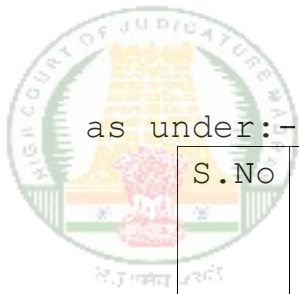
7. Against which, the appellant/claimant filed this present appeal seeking enhancement of compensation.

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.P5 assessing the permanent disability at 37.28%. The Tribunal fixed the disability at 38%. and awarded Rs.76,000/- 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, but the Tribunal had awarded only a sum of Rs.76,000/- for disability of 38%.

9. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal awarded double compensation for the same injuries under two heads, namely, 'for injury' and 'for permanent disability' and therefore, the award of the Tribunal warrants interference.

10. Considering the above submission, this Court fixes a sum of Rs.3,000/- (Rupees Three Thousand Only) for 1% disability and awards an amount of Rs.1,14,000/- (Rupees One Lakh and Fourteen Thousand Only), towards permanent disability and the compensation of Rs.10,000/- (Rupees Ten Thousand Only) awarded 'for injuries' is deleted and the other heads are confirmed.

<https://hcservices.ecourts.gov.in/hcservices/> 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 permanent disability (38%)	76,000	1,14,000	enhanced
2.	For injury	10,000		deleted
3.	For loss of income for three months	15,000	15,000	confirmed
4.	For pain and sufferings	10,000	10,000	confirmed
5.	For transportation	10,000	10,000	confirmed
6.	For loss of happiness and future medical expenses	10,000	10,000	confirmed
7.	For damages to clothes	2,000	2,000	confirmed
8.	For extra nourishment and other expenses	10,000	10,000	confirmed
	Total	Rs.1,43,000	Rs.1,71,000	By enhancing a sum of Rs.28,000/-

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,43,000- (Rupees One Lakh and Forty Three Thousand only) to a sum of Rs.1,71,000/- (Rupees One Lakh and Seventy 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 of Rs.1,71,000/- (Rupees One Lakh and Seventy One Thousand 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 entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal.
No Costs.

Sd/-

Assistant Registrar(writs)

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/True Copy/

Sub Assistant Registrar

To,

1. The Motor Accidents Claims Tribunal -cum-
Chief Judicial Magistrate, Thanjavur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.77266

PM

VB/MR/KKR/SAR3/10/10/2017/4P/4C

C.M.A(MD)No.640 of 2017

06.09.2017