



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.419 of 2014

J.Pradeep Vinoth Kumar

... Appellant/Petitioner

Vs.

1. N.Ramesh

2. M/s.National Insurance Co.Ltd.,
3, North Veli Street, Madurai-625 001.
through its Divisional Manager.

3. P.Pothurajan

4. M/s.Reliance General Insurance Company Ltd.,
Sree Meenakshi Plaza,
55, 80 Feet Road,
Anna Nagar, Madurai-625 020.
through its General Manager.

...Respondents/Respondents

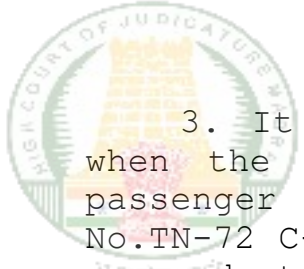
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to graciously enhance the fair and decree passed by the Additional District Court/FTC No.II, Madurai in M.C.O.P.No.2065 of 2008 dated 19.03.2012 by allowing this appeal.

For Appellant	: Mr.J.Ramamoorthy,
For R-1 & R-3	: No Appearance
For R-2	: Mr.D.Sivaraman
For R-4	: Mr.V.Sakthivel

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award passed by the Additional District Court (FTC No.II,) Madurai made in M.C.O.P.No.2065 of 2008 dated 19.03.2012.

2. It is the case of an accident resulting injuries, which took place on 27.05.2008 at about 19.30 hours on Madurai - Trichy Main road near Vellaripatti Kanmoi, Madurai.



3. It is the case of the claimant before the Tribunal that when the claimant J.Pradeep Vinoth Kumar was travelling as a passenger in the first respondent's van bearing Registration No.TN-72 C-3646, near Vellaripatti Kanmoi, the driver of the third respondent, drove the lorry bearing Registration No.TN-65 2358, in a rash and negligent manner and dashed against the van. As a result of the accident, the claimant sustained multiple grievous injuries and became permanently disabled.

4.The claimant filed an application in M.C.O.P.No.2065 of 2008 on the file of the Additional District Court/FTC No.II, Madurai, seeking compensation.

5.Before the Tribunal, the claimant examined two witnesses as P.Ws.1 and 2 and marked fourteen documents as Ex.P.1 to Ex.P.14. 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 rash and negligent driving of the driver of the third respondent and therefore directed the fourth respondent/Insurance Company to pay a sum of Rs.1,33,000/- to the claimant as compensation.

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

8.The learned counsel appearing for the fourth 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 fixed the permanent disability at 44% and awarded Rs.2,000/- for 1% disability, totalling to Rs.88,000/- and it is further submitted that as per multiplier method the petitioner is entitled for a sum of Rs.2,00,000/- and the compensation awarded by the Tribunal under others heads are on the lower side and therefore, the compensation awarded by the Tribunal 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. **the judgment of this Court in *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.1,32,000/- (Rs.3000x44) is awarded. It is submitted by the learned counsel for the appellant that medical bills to the tune of Rs.1,66,700/- in Ex.P.7 and Rs.6,784/- in Ex.P.8, has not been considered by the Tribunal and only Rs.15,000/- was awarded towards medical expense. Considering the medical expenses incurred in Ex.P.7 and Ex.P.8, this Court enhances the medical expense from Rs.15,000/- to Rs.1,73,484. Since, it is submitted that surgery was conducted and steel plate was removed, Rs.25,000/- is awarded towards future medical expense. The tribunal has not awarded any compensation towards loss of income for the period the claimant underwent treatment and Rs.24,000/- is awarded towards the same. The Tribunal has awarded Rs.20,000/- towards pain and suffering and considering the injuries sustained and the treatment he had undergone, Rs.50,000/- is awarded towards the same. The Tribunal has awarded Rs.10,000/- towards extra nourishment and the same is confirmed. The Tribunal has not awarded any compensation towards loss of amenities and transportation and this Court awards Rs.25,000/- and 5,000/- respectively.

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	Disability and loss of income	88,000	1,32,000	Enhanced
2	Pain and sufferings	20,000	50,000	Enhanced
3	Loss of income during the treatment period	--	24,000	Awarded
4	Medical expenses	15,000	1,73,484	Enhanced
5	Future medical expense	--	25,000	Awarded
6	Extra nourishment	10,000	10,000	Confirmed
7	Loss of amenities	--	25,000	Awarded
8	Transportation	--	5,000	Awarded
	Total	1,33,000	4,44,484	By enhancing Rs.3,11,484



13. In the result,

(i) The Civil Miscellaneous Appeal is allowed, by enhancing the award of the Tribunal from Rs.1,33,000/- (Rupees One lakh and thirty three thousand only) to a sum of Rs.4,44,484/- (Rupees Four lakhs forty four thousand four hundred and eighty four 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 fourth 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 respective shares with accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional District Court/FTC No.II,
Madurai.

+1cc to Mr.V.Sakthivel, Advocate Sr.No.79996

+1cc to Mr.D.Sivaraman, Advocate Sr.No.79372

DSK/RMK

VB/KK/SAR4/11/10/2017/4P/4C

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