

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 23.10.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**C.M.A. (MD) No.322 of 2015**

Murugesan

... Appellant / Petitioner

Vs.

The Managing Director,
Tamilnadu States Transport Corporation,
Pudukottai.

... Respondent / Respondent

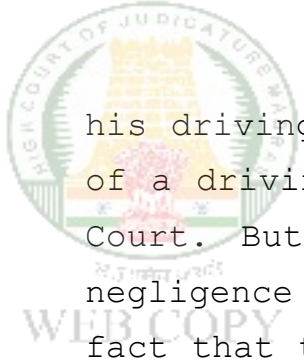
Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to enhance the award amount to Rs.4,00,000/- in Order and decree dated 11.08.2014 made in M.C.O.P.No.392 of 2011 on the file of the Motor Accidents Claims Tribunal, Pudukottai, (Additional District and Sessions Judge/Presiding Officer Special court for E.C. And NDPS Act Cases, Pudukottai.

For Appellant : Mr.P.Ganapathi Subramanian
For Respondent : Mr.D.Sivaraman

JUDGMENT

The injured claimant has filed this appeal, seeking enhancement of compensation. The injured was riding his motor-cycle on 09.10.2010 when the bus belonging to the respondent Corporation dashed against him and in the process the appellant sustained grievous injuries. He restricted his claim to a sum of Rs.10,00,000/-. But the Tribunal awarded only a sum of Rs.1,74,260/- with interest.

2.The Tribunal fixed contributory negligence on the appellant also at 25%. This is questioned by the appellant on the ground that the Tribunal came to such a conclusion because he did not produce



his driving license. Actually the appellant is very much possessed of a driving license. A copy of the same was produced before this Court. But that was not only a ground on which the contributory negligence was fixed by the Tribunal. The Tribunal took note of the fact that the driver of the offending bus was actually acquitted by the Criminal Court. The rough sketch Ex.P.11 was duly perused by the Tribunal and it came to the conclusion that the claimant had also contributed to the accident. Therefore it held that a claimant is entitled to receive at 75% of the compensation and that he must forego 25% on account of his own negligence.

3.I do not want to interfere with this findings. The same is sustained. The next question is whether the claimant has to be given any enhancement? The claimant examined Doctor Aadhiappan as PW.2 who deposed that the claimant has suffered 39% disability. Ex.P.8 Certificate was also issued. Instead of taking as it is, the Tribunal chose to reduce to 34%. There is absolutely no basis for such deduction. This Court would take it that the appellant had suffered 39% disability. It is seen that the appellant has suffered injuries not only on his head and left hip, but also his neck. On account of the cervical injury, the appellant's movements have been severely restricted.

4.The learned counsel for the appellant wanted to produce the claimant before this Court to show his current pathetic physical condition. This Court can visualize that as a result of the disablement suffered by him he will not be able to move as before. Since the claimant could not produce any income proof in support of his claim that he is doing real estate business, the Tribunal fixed his monthly income at Rs.6,000/-. Since he was aged less than 30 at the time of accident and there is functional disability, as a result of this accident, we must to adopt the multiplier method. The income loss will be at $\text{Rs.6000} \times 12 \times 18 = \text{RS.12,96,000/-}$. Since the appellant had suffered disability to the tune of 39% the compensation payable under this head would alone come to



Rs.5,05,440/-. Since the appellant had contributed to the accident by his negligence, there has to be a further deduction by 25%. The compensation for disablement is fixed at Rs.3,79,080/-.

Sl.No	Heads	Amount in Rupees
1.	Compensation for disablement	Rs.3,79,080/-
2.	As per Medical Bills	Rs.1,15,347/-
3.	Pain and Suffering	Rs. 15,000/-
4.	Loss of Income	Rs. 24,000/-
5.	Loss of Transportation Expenses	Rs. 5,000/-
6.	Loss of Extra Nourishment	Rs. 5,000/-
7.	Future Medical Expenses	Rs.1,00,000/-
	Total	Rs.6,43,427/-

5.The claimant is entitled to the said sum of Rs.6,43,427/-. The respondent Corporation is directed to pay the said amount with interest at 7.5% per annum. If the appellant has to pay an additional Court fee, the same shall also be paid. The Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

Additional District and Sessions Judge/Presiding Officer,
The Motor Accidents Claims Tribunal, Pudukottai,
Special Court for E.C. And NDPS Act Cases, Pudukottai.

Copy to:

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.D.SIVARAMAN, Advocate SR.No.83200.

C.M.A. (MD) No.322 of 2015
23.10.2017