



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.436 of 2015

Govindaraj ... Petitioner/Appellant
Vs.

1.M.Sankar

2.The Branch Manager,
National Insurance Company Limited,
1st Floor, Rose Building, Main Road,
Kovilpatti.

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment in M.C.O.P.No.74 of 2006 dated 06.09.2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Kovilpatti.

For Petitioner : Mr.Minnavadi
For R-1 : No appearance
For R-2 : Mr.D.Sivaraman

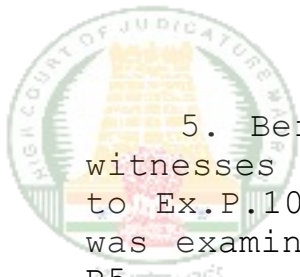
JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the award passed in M.C.O.P.No.74 of 2006 dated 06.09.2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Kovilpatti.

2. It is a case of injury sustained by the injured/claimant in an accident, which took place on 09.09.2006 at 15.00 hours at Sivakasi to Vembakottai Road, in front of Kakka Kalayana Mandapam, near Rani Anna Colony.

3. It is the case of the claimant before the Tribunal that on the date of accident, when he was going in his two-wheeler bearing registration No.TN 67 L 298, the Mini Door Auto bearing registration No. TN 59 S 9856, belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the two wheeler 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.74 of 2006 dated 06.09.2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Kovilpatti, seeking compensation.



5. Before the Tribunal, the petitioner/claimant examined two witnesses as P.W.1 and P.W.2 and marked ten documents as Ex.P.1 to Ex.P.10. On the side of the Insurance Company, one witness was examined as R.W.1 and five documents were marked as Ex.R1 to R5.

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 Mini Door Auto and since the driver of the auto did not have any valid driving licence at the time of the accident, directed the second respondent/Insurance Company to pay the compensation and gave liberty to the second respondent/Insurance Company to recover the same from the owner of the vehicle/1st respondent herein.

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

8. Heard the submissions made on either side and perused the materials available on record.

9. The learned counsel appearing for the appellant submitted that while calculating the loss of income, the Tribunal had taken only a sum of Rs.3,000/- as monthly income and further, the Tribunal erred in deducting 1/3rd towards personal income in a case of non-fatal and also multiplier '13' is adopted instead of '14' and therefore, the compensation awarded by the Tribunal is to be enhanced.

10. Per contra, the learned counsel appearing for the second respondent on instructions submitted that the Tribunal awarded double compensation for the same injuries under two heads, namely, 'for disability' and 'for loss of income' and therefore, the compensation awarded 'for disability', is to be deleted.

11. I find some force in the arguments advanced by the learned counsel appearing for the second respondent/Insurance company and therefore, the compensation awarded towards 'Disability' is deleted.

12. A perusal of the award shows that it is an unfortunate case, where a person sustained 80% disability and is not in a position to do any work. But, the learned Judge had awarded lesser compensation. Therefore, this Court feels that ends of justice would be met only if the loss of income is calculated by taking the monthly income of the injured as Rs.4500/-. Therefore, if a sum of Rs.4,500/- is taken as monthly income, the loss of income would be Rs.4,800/- (4500 X 12 X 14 X 80/100) and further, the Tribunal awarded a sum of Rs.12,000/- towards attendant charges. However, this Court is of the view that since the injured



sustained 80% disability, he cannot do any work without the help of others and therefore, if a sum of Rs.72,000/- is awarded towards 'attendant charges', ends of justice would be met and therefore, the said amount is awarded and the compensation awarded under the other heads are confirmed.

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

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income during treatment period	12,000	12,000	confirmed
2.	For Transportati on	10,000	10,000	confirmed
3.	For extra nourishment	10,000	10,000	confirmed
4.	For medical expenses	30,000	30,000	Confirmed
5.	For future loss of income	3,12,000	6,04,800	enhanced
6.	For attendant charges	12,000	72,000	enhanced
7.	For Disability	1,00,000	-	deleted
8.	For pain and sufferings	1,00,000	1,00,000	confirmed
	Total	Rs.5,86,000	Rs.8,38,800	By enhancing a sum of Rs.2,52,800/-

14. The Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery". In the present case, there is no reason to deviate from the principle of "pay and recovery". Therefore, the Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the second respondent. There is no error in the said finding. Therefore, I have no reason to interfere with the finding of the Tribunal.



15. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.5,86,000/- (Rupees Five Lakhs and Eighty Six Thousand only) to a sum of Rs.8,38,800/- (Rupees Eight Lakhs Thirty Eight Thousand and Eight Hundred 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 with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and in the later stage, the Insurance Company is entitled to recover the same from the owner of the vehicle/first respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in 2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others). 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(C.O)

/True Copy/

Sub-Assistant Registrar

To:

The Subordinate Judge,
Motor Accident Claims Tribunal, Kovilpatti.

Copy to:-

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.V.Minnavadi, Advocate, SR.No.77956
+One cc to M/s.D.Sivarakan, Advocate, SR.No.77849

pm

RL/5C/4P/KP/SAR1/11/10/2017