

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 19.09.2017****CORAM****WEB COPY****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD)No.851 of 2016**

Selvaraj @ Selvarajan

... Appellant/Petitioner

Vs.

Tamil Nadu State Transport Corporation,
Represented through its,
Managing Director,
Bye pass Road,
Chettinayakkanpatti,
Dindigul District.

...Respondent / Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award passed in MCOP.No.133 of 2012, dated 12.04.2013, on the file of the Motor Accident Claim Tribunal/ Special Sub Court, Dindigul and allow this appeal.

For Appellant

: Mr.S.M.Mohan Gandhi

For Respondent

: Mr.K.Sudalaiyandi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award passed in MCOP.No.133 of 2012, dated 12.04.2013, on the file of the Motor Accident Claim Tribunal/ Special Sub Court, Dindigul.

2. It is a case of an accident causing injury, which took place on 21.11.2007 at 10.00 p.m, on Vattlagundu - Dindigul Main road near Sri Ram coconut factory.

3. It is the case of the injured claimant before the Tribunal that on the date of accident, when claimant was walking towards North on the extreme left side of the road, the driver of the bus bearing Registration No. TN-57-N-1016, drove the vehicle in a rash and negligent manner and dashed against the claimant from behind, as a result, the claimant sustained multiple grievous injuries all over the body and fracture on the left thigh and subsequently, took treatment at hospital as inpatient and outpatient.

4. The claimant filed an application in M.C.O.P.No.133 of 2012 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Dindigul, seeking compensation.



5. Before the Tribunal, the appellant/claimant examined three witnesses as P.W.1 to P.W.3 and marked nine documents as Ex.P.1 to Ex.P.9. On the side of the respondent/Transport Corporation, neither witness was examined nor document was marked.

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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 Transport Corporation Bus and therefore directed the respondent/ Transport Corporation to pay a sum of Rs.1,40,000/-, 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 appellant sustained 40%, disability as per Ex.P.8, but, the Tribunal has reduced the same to 25% without any basis. The Tribunal ought to have adopted multiplier method for arriving at loss of income of the injured. The Tribunal has awarded only Rs.15,000/- towards pain and sufferings and the same has to be enhanced to Rs.1,00,000/-. The compensation awarded under the other heads are also on lower side and therefore, the compensation awarded by the Tribunal has to be enhanced.

9. The learned counsel appearing for the respondent/ Transport Corporation submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

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

11. As rightly contended by the learned Counsel for the appellant, while P.W.2 - Doctor determining the disability of the injured claimant at 40%, the Tribunal has also erred in reducing the same to 25%. Hence, this Court takes the disability of the appellant as 40%, as determined by P.W.2 - Doctor. The Tribunal has erred in awarding Rs.1,500/- for 1% disability. In 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.1,20,000/- (Rs.3000x40) is awarded. The compensation awarded by the Tribunal under others heads are hereby confirmed.



12. 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 loss of income	37,500	1,20,000	Enhanced
2.	For pain and sufferings	15,000	15,000	Confirmed
3.	For medical expenses	83,000	83,000	Confirmed
4.	For loss of amenities	500	500	Confirmed
5.	For Extra Nourishment	3,000	3,000	Confirmed
6.	For Transportation	1,000	1,000	Confirmed
	Total	1,40,000	2,22,500	By enhancing Rs.82,500/-

13. In the result,

(i) This Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from Rs.1,40,000/- (Rupees one lakh and forty thousand only) to a sum of Rs.2,22,500/- (Rupees Two Lakhs twenty two thousand and five 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 respondent/Transport Corporation 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 entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar



To,

1.The Motor Accident Claims Tribunal/
Special Sub Court, Dindigul.

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

+1cc to M/S.S.M.MOHAN GANDHI, Advocate SR.No.79803

+1cc to M/S.K.SUDALAIYANDI, Advocate SR.No.79686

dsk

MAS/SV-MMS/SAR3:06.11.2017:4P-5C

C.M.A(MD)No.851 of 2016

19.09.2017