



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.90 of 2015

Gunasekar

... Appellant/Petitioner

Vs.

1. Ramaraj

2. National Insurance Co. Ltd.,
through its Branch Manager,
No.175 A, Great Cotton Road,
Tuticorin.

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of M.V.Act, 1988, to enhance the award amount in M.C.O.P.No.392 of 2010 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court, Tirunelveli, dated 11.01.2013.

For Appellant	: Mr.T.Selvakumaran
For Respondents	: Mrs.K.R.Shivashankari for Mr.S.Srinivasa Raghavan for R2 No Appearance for R1

JUDGMENT

Heard the learned counsel on either side.

2.The claimant has filed this appeal, questioning the inadequacy of compensation awarded in M.C.O.P.No.392 of 2010 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court, Tirunelveli. The appellant was riding a two wheeler when the accident in question occurred on 11.11.2009. According to the claimant, the accident took place on account of the rash and negligent driving on the part of the TATA City Rider belonging to the first respondent herein. But, the F.I.R. came to be registered against the claimant. Final report was also filed against him. Therefore taking into account the facts and circumstances, the Tribunal fixed 50% contributory negligence on the claimant. The said finding is based on sound reasoning and relevant materials and therefore the said findings stand confirmed.

3.The appellant/claimant was a coolie. He had suffered multiple fractures on his right leg. The doctor has given evidence that his leg had got bent and there has also been resultant shortening. Therefore, in this case, the Tribunal ought to have adopted the multiplier method. Since the accident took place in the year 2009, the monthly income in the absence of proof can be taken as Rs.6,000/-. Applying the multiplier of 16 as per Sarala Verma's case, the loss of income would come to

Rs.6000x12x16 = Rs.11,52,000/-. Since the claimant has suffered 65% liability, the pecuniary loss will have to be quantified at Rs.7,48,800/-. A sum of Rs.51,200/- can be awarded towards pain and sufferings. The appellant has been as inpatient. Therefore, towards medical expenses, a sum of Rs.1,50,000/- can be awarded. Towards extra nourishment, transportation charges, etc., a sum of Rs.50,000/- can be awarded. Therefore, the compensation payable to the claimant would come at Rs.10,00,000/-. Since contributory negligence of 50% has been fixed on the claimant himself, he will be entitled to Rs.5,00,000/-. This appeal is also restricted to Rs.5,00,000/-. Therefore, the second respondent insurance company is directed to deposit the compensation amount with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the said sum, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.

4.This civil miscellaneous appeal stands allowed. No costs.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 84767
+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 84262

ARUL

TE/JC/SAR-1 : 13/12/2017 : 2P/5C

C.M.A. (MD) No.90 of 2015 and
30.10.2017