

**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.916 of 2015**

A.Kannusamy

... Appellant / Petitioner

Vs

1. M.Bilal Ibrahim

2. The Divisional Manger,
The New India Assurance Co. Ltd.,
Divisional Office, 248-B,
Kamarajar Salai,
Madurai-625 001.

3. M/s.Tamilnadu State Transport Corporation
(Madurai) Ltd.,
By-pass Road,
Madurai-625 010.

... Respondents / Respondents

(In the appeal, no claim
as against 3rd respondent.
Hence notice is dispensed with)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.243 of 2013 on the file of Motor Accident claims Tribunal / Principal Subordinate Judge, Madurai, dated 15.04.2015.

For Appellant	: Mr.K.Kumaravel
For R1	: Mr.C.M.Arumugam
For R2	: Mr.K.Murugesan
For R3	: Mr.K.Sudalaiyandi

J U D G M E N T

THIS Civil Miscellaneous Appeal has been filed by the
appellant/petitioner against the judgment and decree in



M.C.O.P.No.243 of 2013 passed by the Motor Accident claims Tribunal / Principal Subordinate Judge, Madurai, dated 15.04.2015.

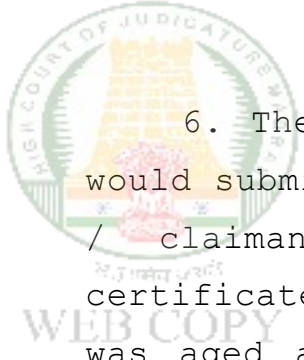
2. It is a case of accident causing injuries which took place on 23.08.2012 at about 16.00 hours. When the petitioner was travelling in the third respondent's bus bearing Registration No.TN-57-N-1642, near Najavaram Konmoi at E.Pudupathi, Periyakulam, the first respondent's lorry bearing Registration No.TN-60-D-0268, insured with second respondent/New India Assurance Co. Ltd., was driven by its driver in a rash and negligent manner and dashed against the third respondent's bus. Due to the accident the petitioner sustained multiple grievous injuries and become permanently disabled. Hence, the petitioner filed an application in M.C.O.P.No.243 of 2013, on the file of Motor Accident claims Tribunal / Principal Subordinate Judge, Madurai, seeking compensation of Rs.25,00,000/-.

3.Before the Tribunal, on the side of the claimant, five witnesses viz., P.W.1 and P.W.5 were examined and twenty nine documents viz., Exs.P.1 to P.29 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and no document was marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimant and respondents 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 lorry and directed the second respondent Insurance Company to pay a sum of Rs.15,85,100/- to the claimant.

5. Against which, the appellant/claimant filed the present

appeal for enhancement of compensation.



6. The learned counsel appearing for the appellant/ claimant would submit that the Tribunal ought to have seen that the injured / claimant suffered a disability of 100% and disability certificate was also issued by the doctor and since the claimant was aged about 40 years, 30% of future prospects ought to have been awarded. Hence, he prays for enhancement of compensation.

7. The learned Counsel for the second respondent Insurance Company would submit that based on the oral and documentary evidences, the Tribunal has correctly come to the conclusion and awarded just and reasonable compensation and hence, the award passed by the Tribunal deserves no interference and hence, this appeal has to be dismissed.

8. Heard the learned counsel appearing on both side and perused the materials available on record.

9. A perusal of the award passed by the Tribunal shows that the Tribunal has fixed the disability at 50%, without any basis while, the Doctor P.W.4 has assessed the disability at 80%. The Tribunal has adopted multiplier method, for arriving at loss of income as per the judgment of the Honourable Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation reported in 2009(2) TNMAC 1 (SC). Following the same, Rs.9,000/- is fixed as monthly income and if 30% ($9000 \times 30 / 100$) of the future prospects is added, it would be Rs.11,700/- (Rs.9000+Rs.2700). $1/3^{\text{rd}}$ (Rs.3000) of the income has to be deducted towards personal expenses and accordingly the income would be Rs.7,800/- (Rs.11,700 - Rs. 3,900). The multiplier is 15 and therefore, the loss of income would be Rs.14,04,000/- ($Rs.7,800 \times 12 \times 15$). The Tribunal has awarded Rs.30,000/- towards pain and sufferings, considering the the injuries, treatment and the disability, this Court enhances the service court Rs.14,04,000/- to Rs.44,04,000/-. The compensation under other heads awarded by the Tribunal are hereby confirmed.



10. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:

S. No	Description	Awarded by Tribunal (Rs)	Awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	For loss of income	10,53,000	14,04,000	Enhanced
2	Medical expenses	4,56,000	4,56,000	Confirmed
3	Damages to cloth and articles	1000	1,000	Confirmed
4	Transportation	15,100	15,100	Confirmed
5	Extra nourishment	20,000	20,000	Confirmed
5	Pain and sufferings	30,000	1,00,000	enhanced
6	Medical Attendants	10,000	10,000	Confirmed
	Total	15,85,100	20,06,100	By enhancing Rs.4,21,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.15,85,100/- (Rupees Fifteen lakhs eighty five thousand and one hundred) to Rs.20,06,100/- (Rupees Twenty Lakhs six thousand and one hundred) passed in M.C.O.P.No.243 of 2013, by the Motor Accident claims Tribunal / Principal Subordinate Judge, Madurai. The 2nd 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 order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the entire award amount, with accrued interests and costs without filing any formal petition before the Tribunal. No Costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/



To

1. The Principal Subordinate Judge,
Motor Accident claims Tribunal, Madurai.

+1cc to M/S.K.MURUGESAN, Advocate SR.No.79424.
+1cc to M/S.K.SUDALAIYANDI, Advocate SR.No.79403.
+1cc to M/S.C.M.ARUMUGAM, Advocate SR.No.80027.
+1cc to M/S.K.KUMARAVEL, Advocate SR.No.79406.

C.M.A (MD) No.916 of 2015
18.09.2017

dsk/rmk
SDS/GT/SAR 1/27.10.2017/5P/6C