



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.922 of 2015

Jep Chand

... Appellant/Petitioner

Vs

1. S.Prabhu
2. R.Rengasamy

3. The New India Assurance Company Limited,
Dindigul,
represented through Branch Manager,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the order and decree made in M.C.O.P.No.107 of 2010, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Nagercoil, dated 07.04.2014.

For Appellant : Mr.T.Selvakumaran

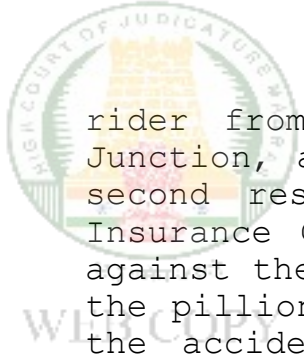
For Respondents : Mr.R.Alagumani for R.1
: Mr.S.Ramesh for R.3
: No Appearance for R.2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the judgment and decree made in M.C.O.P.No.107 of 2010, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Nagercoil, dated 07.04.2014.

2. The brief facts of the case are as follows:

<https://hcservices.ecourts.gov.in/hcservices/> It is a case of injury in which the accident took place on 21.04.2009 at 12.15 noon. When the petitioner was riding his two wheeler bearing Registration No.TN-74D-7876 along with a pillion



rider from Nagercoil to Kanyakumari main road, near Pothaiyadi Junction, a lorry bearing Registration No.TN-57K-5775, owned by the second respondent, which was insured with the third respondent Insurance Company, came in a rash and negligent manner and dashed against the two wheeler. Due to the said impact, the petitioner and the pillion rider sustained grievous injuries and immediately after the accident, they were taken to Thiraviam Orthopedic Hospital, Nagercoil and surgeries were done to grievous injuries. The petitioner was aged about 44 years at the time of accident and was earning a sum of Rs.20,000/- p.m., by doing business. Hence, he filed a claim petition in M.C.O.P.No.107 of 2010, on the file of the Motor Accident Claims Tribunal, the Chief Judicial Magistrate, Nagercoil, claiming a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and fifteen documents viz., Exs.P.1 to P.15 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and three documents viz., Exs.R.1 to R.3 were marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant 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 offending vehicle and directed the third respondent Insurance Company to pay a sum of Rs.1,08,900/- 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 awarded very meagre amount for 15% disability. He further submitted that the amounts awarded under others heads are also very meagre. Hence, he prays for enhancement of compensation.

7. The learned Counsel for the third 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 sides and perused the materials available on record.

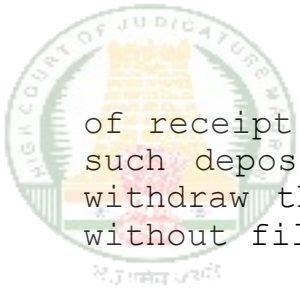
9. A perusal of the award passed by the Tribunal, it is seen that for 15% disability, the Tribunal has awarded a sum of Rs.2,000/- for each percentage of disability, which is in the considered opinion of this Court, very meagre. Relying upon the judgment of this Court in **National Insurance Company Limited v.**

G.Ramesh and another reported in **2013 (2) TN MAC 583**, this Court is inclined to grant a sum of Rs.3,000/- (Rupees Three Thousand only) for 1% disability. Hence, a sum of Rs.45,000/- (Rs.3000/-x15%) is awarded for 15% disability sustained by the injured claimant. Since the Tribunal has not granted any amount towards pain and sufferings, considering the pain and sufferings undergone by the injured claimant due to the accident, this Court is inclined to grant a sum of Rs.1,00,000/- towards this head. Further the Tribunal has not awarded any amount towards loss of amenities, hence, this Court is incline to grant a sum of Rs.25,000/- towards the same. The Tribunal has awarded only meagre amount towards extra nourishment and for transport expenses. Considering the period of treatment taken by the injured claimant, this Court is inclined to enhance the same to Rs.10,000/- and Rs.10,000/- respectively. The amounts awarded under other heads stand unaltered.

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

S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1.	For disability	30,000	45000	enhanced
2	For attendant charges	5,000	5,000	confirmed
3	For medical expenses	47,870	47,870	confirmed
4	For medical bills	16,030	16,030	confirmed
5	For extra nourishment	5,000	10,000	enhanced
6	For transport expenses	5,000	10,000	enhanced
7	For pain and sufferings	---	1,00,000	granted
8	For loss of amenities	---	25,000	granted
	Total	1,08,900	2,58,900	By enhancing a sum of Rs.1,50,000

11. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.1,08,900/- to Rs.2,58,900/-, dated 07.04.2014, passed in M.C.O.P.No.107 of 2010, on the file of the Motor Accident Claims Tribunal, the Chief Judicial Magistrate, Nagercoil. The third 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 appellant - claimant is permitted to withdraw the entire award amount, with accrued interests and costs without filing any formal petition before the Tribunal. No Costs.

WEB COPY

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Nagercoil.

Copy To:-

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

+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 76706
+ 1 CC TO Mr.V.RAGHAVACHARI, ADVOCATE IN SR No. 77034
+ 1 CC TO Mr.R.ALAGUMANI, ADVOCATE IN SR No. 77170

SSL

TE/GT/SAR-I : 10/10/2017 : 4P/6C

C.M.A (MD) No.922 of 2015
05.09.2017