



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.412 of 2014

V.Rajamani ... Appellant / Petitioner

Vs.

1.R.Arumugam

2.The Oriental Insurance Co. Ltd.,
Sri Vijaya Complex,
IInd Floor, Theni

... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.205 of 2010 on the file of the Motor Accident Claims Tribunal(Sub-Judge), Kulithalai, dated 27.01.2014.

For Appellant	: Mr.T.Selvakumaran
For R-1	: No Appearance
For R-2	: Mr.K.Bhaskaran

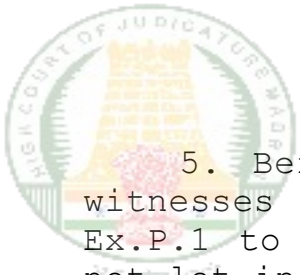
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award of the Motor Accident Claims Tribunal (Sub-Judge), Kulithalai made in M.C.O.P.No.205 of 2010, dated 27.01.2014.

2. It is a case of injury sustained by the injured/claimant in an accident, which took place on 28.02.2010 at 7.00 p.m., near Valayapatty Nursery.

3. It is the case of the claimant before the Tribunal that when he was travelling as a pillion rider in a Hero Honda Motorcycle bearing registration No.TN 55 P 0466, the driver of the Tractor bearing registration No.TN 55 D 7038, drove the vehicle in a rash and negligent manner and dashed against the Hero Honda motorcycle and caused the accident. In the said accident, the injured sustained grievous injuries.

4. The claimant filed an application in M.C.O.P.No.205 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-Judge), Kulithalai, seeking compensation.



5. Before the Tribunal, the appellant/claimant examined two witnesses as P.Ws.1 and 2 and marked thirteen documents as Ex.P.1 to Ex.P.13. The second respondent/Insurance Company did not let in any oral or documentary evidence before the Tribunal.

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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 Tractor and therefore, directed the second respondent/Insurance Company to pay a sum of Rs.86,000/-, 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 victim sustained injuries and he was treated by P.W.2-Doctor. The Doctor had issued the Disability Certificate under Ex.P12 assessing the permanent disability at 38%. The learned counsel for the appellant relied on the Judgment rendered in **P.Elangovan vs. S.Murali and two others** reported in **2017 (1) TN MAC 251**, wherein it has been held that a sum of Rs.3,000/- should be fixed for 1% disability, but the Tribunal had awarded only a sum of Rs.76,000/- for disability of 38%.

9. Considering the above submission, this Court fixes a sum of Rs.3,000/- (Rupees Three Thousand Only) for 1% disability and awards a sum of Rs.1,14,000/- (Rupees One Lakh and Fourteen Thousand Only) (38 X 3000), towards permanent disability.

10. Further, the sum of, Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards pain and suffering, is on the lower side and therefore, the same is enhanced to a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only).

11. Similarly, the Tribunal has not awarded any compensation towards extra nourishment. Therefore, a sum of **Rs.20,000/-** (Rupees Twenty Thousand only) is awarded by this Court.

12. Further, the Tribunal has not awarded any compensation towards loss of amenities. Therefore, a sum of **Rs.20,000/-** (Rupees Twenty Thousand only) is awarded by this Court and the other heads are confirmed.

13. In view of the settled position of law, 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 permanent disability (38%)	76,000	1,14,000	enhanced
2.	For pain and sufferings	10,000	15,000	enhanced
3.	For Extra Nourishment		20,000	awarded
4.	For loss of amenities		20,000	awarded
	Total	Rs.86,000	Rs.1,69,000	By enhancing a sum of Rs.83,000/-

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.86,000/- (Rupees Eighty Six Thousand only)** to a sum of **Rs.1,69,000/-** (Rupees One Lakh and Sixty Nine Thousand 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 of **Rs.1,69,000/-** (Rupees One Lakh and Sixty Nine Thousand only) 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.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To,

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
(Sub-Judge), Kulithalai.



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

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+1 CC to M/s.K.BHASKARAN, Advocate, SR No. 71141.

+1 CC to M/s.T.SELVAKUMARAN, Advocate, SR No. 71499.

PM

PSM/JC/SAR2/28.08.2017/4P/5C

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