

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 22.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A.No.1044 of 2013****and****C.M.P. (MD)No.3 of 2013**

The Regional Manager,
The New India Assurance Company Limited,
No.85-C, Market Road,
Thanjavur.

... Appellant/Respondent No.2

Vs.

1.Jeyapraksah

... Respondent No.1/Petitioner

2.Ramasamy

... Respondent No.2/Respondent No.1

(Notice Dispensed with, R2 Since exparte in Tribunal)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree dated 22.07.2011 and made in M.C.O.P.836 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Thanjavur and to allow the appeal.

For Appellant : Mr.K.Murugesan

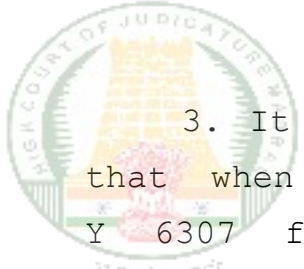
For R-1 :Mr.G.Karnan

(R-2 remained ex-parte before the Court below)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 22.07.2011 made in M.C.O.P.No.836 of 2007 by the Motor Accident Claims Tribunal Cum Additional Subordinate Judge, Thanjavur.

2. It is a case of injury sustained by the first
<https://hcservices.ecourts.gov.in/hcservices/>
respondent/claimant, in an accident, which took place on 11.08.2007
at about 10.30 a.m., at Thanjavur Medical College road.



3. It is the case of the injured/claimant before the Tribunal that when he was riding a two wheeler bearing registration No.TN 07 Y 6307 from Thanjavur Medical College Hospital to purchase electrical goods for the contract works done by him and was coming from South to North, an Ambassador car bearing registration No.TDM.6795, which was driven by its driver in a rash and negligent manner, dashed against the petitioner. Due to the impact of the accident, the petitioner sustained grievous injuries.

4. The injured claimant filed an application in M.C.O.P.No.836 of 2007 on the file of the Motor Accident Claims Tribunal Cum Additional Subordinate Judge, Thanjavur.

5.Before the Tribunal on the side of the petitioner, P.Ws.1 and 2 were examined and Exs.P1 to P7 were marked. On the side of the respondents, no oral or documentary evidence was marked.

6.On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.3,50,600/- with interest at the rate of 6%. Challenging this award, the present appeal has been filed by the New India Assurance Company.

7.Heard the learned counsel for the appellant and the learned counsel for the first respondent and also perused the materials available on record.

8.The learned counsel for the appellant/ New India Assurance Company by relying on a Judgement of this Court in R.MAHABOOB ALI v. S.GNANESWARAN reported in 2016(2) TN MAC 519, would submit that there is no functional disability and it is only a fracture in the leg and therefore, the Tribunal was not right in applying multiplier method and and hence, as per the above Judgement a sum of Rs.3,000/- should be fixed per 1% percentage of disability, but the Tribunal has erroneously adopted the multiplier method and has awarded a sum of Rs.2,30,400/- for future loss of income.



9. Considering the above submission and also considering the Judgment of this Court, I am of view that the compensation awarded, for the 45% disability, which is a functional disability, can be fixed at Rs.3,000/- per 1% percentage instead of applying multiplier method and for the other heads, the compensation awarded by the Tribunal is less. Hence, the award of the trial Court regarding future loss of income for 45% at Rs.2,30,400/- is reduced to Rs.1,35,000/- and in the other heads, it has to be enhanced.

10. In view of the settled position of law, this Court modifies the award of the Tribunal in the head of 'future loss of income' and increases the compensation on other heads, 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	40,000	50,000	enhanced
2.	For future loss of income for the disability of 45%	2,30,400	1,35,000	reduced
3.	For Transport to hospital and extra nourishment	5,000	25,000	enhanced
4.	For pain and sufferings	10,000	50,000	enhanced
5.	For medical expenses	65,177.40	65,177.40	confirmed
	Total	Rs.3,50,177.40 rounded off to Rs.3,50,600/-	Rs.3,25,177.40 rounded off to Rs.3,25,200/-	By reducing a sum of Rs.25,400/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed by reducing the award of the Tribunal from Rs.3,50,600 (Rupees Three Lakhs Fifty Thousand and Six Hundred Only) to a sum of



Rs.3,25,200/- (Rupees Three Lakhs Twenty Five Thousand and Two Hundred Only) along with interest at the rate of 6% per annum from the date of petition till date of realisation and proportionate costs. It is represented that the appellant/Insurance Company has already deposited the entire award amount. Hence, the first respondent/claimant is permitted to withdraw the compensation amount of Rs.3,25,200/- with accrued interests and costs, less the amount already withdrawn, without filing any formal application before the Tribunal. The Insurance Company is permitted to withdraw the excess amount, if any. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.

+1cc to M/S.K.MURUGESAN, Advocate SR.No.73693.

+1cc to M/S.G.KARNAN, Advocate SR.No.74055.

C.M.A.No.1044 of 2013
22.08.2017

das/rj2
SDS/KK/SAR 3/08.11.2017/4P/4C