



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1616 of 2013

Sathiyakala ... Appellant /Petitioner-Claimant

Vs.

1.C.Kulandaisamy

2.The Divisional Manager,
United India Insurance Co.Ltd.,
Railway Feeder Road,
Virudhunagar. ... Respondents/Respondents

(Since R1 is remained exparte
before the trial Court and hence
he is given up in this C.M.A)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree made in M.C.O.P.No.85 of 2010, dated 29.01.2013, on the file of the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar.

For Appellant :Mr.M.Thirunavukkarasu

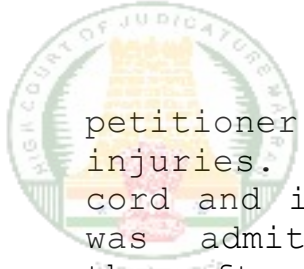
For Respondents :Mr.N.Sivakumar
for R.2
:R.1 Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the order and decree made in M.C.O.P.No.85 of 2010, dated 29.01.2013, on the file of the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar, seeking enhancement of compensation.

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

It is a case of injury. On 14.04.2009 at about 07.30 a.m, at Kalurichi to Virudhunagar main road, while the injured claimant was travelling in a bus bearing Registration No.TN-40-7272 owned by respondent, which was insured with the second respondent, the bus was driven by its driver in a rash and negligent manner and it fell down in the urani. Therefore, the



petitioner along with other passengers were sustained grievous injuries. The injured claimant sustained injuries in the spinal cord and injuries all over the body. Immediately the petitioner was admitted in the Government Hospital, Virudhunagar and thereafter she referred to Government Rajaji Hospital, Madurai for better treatment. The injured claimant is still under treatment as an out patient. Hence, the injured claimant claimed a sum of Rs.4,00,000/- as compensation by filing a petition in M.C.O.P.No. 85 of 2010, on the file of the Motor Accident Claims Tribunal/Additional District Court, Virudhunagar.

2. Before the Tribunal, on the side of the claimants, two witnesses viz., P.Ws.1 and 2 were examined and nine documents viz., Exs.P.1 to P.9 were marked and on the side of the respondents, neither any witness was examined nor any document was marked.

3.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing 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 offending vehicle and directed the second respondent Insurance Company to pay a sum of Rs.80,000/- as compensation to the injured claimant.

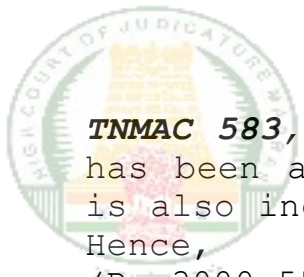
4. Against which, the appellant/claimant has filed this present appeal seeking enhancement of compensation.

5. The learned Counsel for the appellant would submit that though P.W.2 - Doctor has fixed the disability of the appellant/injured claimant as 55%, the Tribunal has reduced the same to 40% and the Tribunal has fixed meagre amount of Rs.1,500/- for each percentage of disability. He further submitted that the Tribunal has awarded meagre amounts for the other heads also. Hence, the learned Counsel for the appellant/injured claimant seeks enhancement of compensation.

6. The learned counsel for the first respondent would submit that based on the available oral and documentary evidences, the Tribunal has awarded just and reasonable amount as compensation to the appellant/injured claimant. Hence, he prays for dismissal of this appeal.

7. Heard the learned counsel appearing on both sides and perused the materials available on record.

8. As rightly contended by the learned Counsel for the appellant, while P.W.2 - Doctor determining the disability of the injured claimant at 55%, the Tribunal was erred in reducing the same to 40%. Hence, this Court has taken the disability of the appellant as 55%, as determined by P.W.2 - Doctor. In the



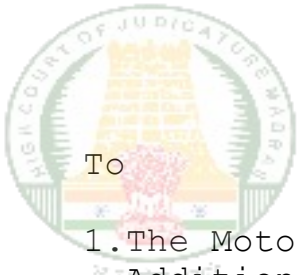
TNMAC 583, for each percentage of disability, a sum of Rs.3,000/- has been awarded. By relying upon the said decision, this Court is also inclined to grant a sum of Rs.3,000/- for each disability. Hence, for disability, a sum of Rs.1,65,000/- (Rs.3000x55) has been awarded. The Tribunal has awarded a sum of Rs.3,000/- each towards attendant charges and pain and sufferings respectively, which are very meagre, in the considered opinion of this Court. Since the appellant/injured claimant sustained injuries in her spinal cord, during the treatment period, she must have lot of pain and sufferings and also she was not able to do her work without the assistance of others and hence, this Court has enhanced the amount from Rs.3,000/- to Rs.1,00,000/- towards pain and sufferings and from Rs.3,000/- to 25,000/- towards attendant's charges. Further the Tribunal has not awarded any amount for future medical expenses. Hence, this Court has awarded a sum of Rs.50,000/- for future medical expenses. The other amounts granted by the Tribunal under various heads shall stand unaltered. Accordingly, this Court awarded the following amount as compensation under the following heads:

For disability(Rs.3000/-x55)	= Rs.1,65,000/-
For pain and sufferings	= Rs.1,00,000/-
For future medical expenses	= Rs. 50,000/-
For attendant's charges	= Rs. 25,000/-
For medical expenses	= Rs. 7,000/-
For transport charges	= Rs. 3,000/-
For extra nourishment	= Rs. 3,000/-
For damages of clothes	= Rs. 1,000/-

Total	= Rs. 3,54,000/-

13. In the result, this Civil Miscellaneous Appeal is allowed by enhancing the compensation from Rs.80,000/- to Rs.3,54,000/- (Rupees Three Lakhs and Fifty Four Thousand Only) along with interests and costs at the rate of 7.5% p.a. The Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount, if any, already deposited before the tribunal within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is permitted to withdraw the entire award amount along with interest and costs as apportioned by the Tribunal without filing any formal petition before the Tribunal. No Costs. The appellant/claimant is directed to remit the enhanced Court fee before the Court below for the enhanced award granted by this Court.

Sd/-
Assistant Registrar(CO)



To

1.The Motor Accident Claims Tribunal/
Additional District Court, Virudhunagar.

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

+1cc to M/S.M.THIRUNAVUKKARASU, Advocate SR.No.69148

+1cc to M/S.N.SIVAKUMAR, Advocate SR.No.69500

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RL/SKN-RSK/SAR1:31.08.2017:4P-5C

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