



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2017

CORAM:

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.1632 of 2013

B.Krishnan (Died)

- 1.K.Deeba Santhoshi
- 2.K.Gomathi Meenakshi
- 3.Ghana Nadhan

***(Minors 2 and 3 represented by
its natural Guardian Mother first petitioner)***

- 4.P.Balasubramanian
- 5.B.Mallika

... Appellants / Petitioners

***(The appellants 1 to 5 brought on record as the
LRs of the deceased sole appellant vide order
of this Court dated 04.01.2017 made in CMP(MD)No.
12540 of 2016 in C.M.A. (MD)No.1632 of 2013)***

Vs.

1. M/S The Oriental Insurance Company Limited.,
108, T.P.K.Road,
Madurai.

- 2.S.Ghouse Sardhar Hussain
- 3.Jeyasree Rathi
- 4.The New India Assurance Company Ltd.,
242-B, Kanarajar Salai,
Madurai.

... Respondents/Respondents

[2& 3 Respondents set exparte in the
Lower Court]

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.731 of 2005, dated 18.01.2012 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.3, Madurai.

For Appellants
<https://hcservices.ecourts.gov.in/hcservices/>

: Mr.R.Nandakumar

For Respondents

: Mr.K.Baskaran for R1



: R2 & R3- Ex.Parte

: Mr.J.S.Murali for R4

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants against the award amount of Rs.1,83,400/- (Rupees One Lakh Eighty Three Thousand Four Hundred only) for the disability sustained by the appellant for the injuries in the accident occurred on 11.01.2004, when he was riding his two wheeler, which was hit by the two wheeler belonging to the second respondent insured with the first respondent.

2. It is evident from the records that the claimant sustained injuries and he was admitted in the Apollo Hospital on 11.01.2004 and discharged on 17.01.2004. He sustained a fracture in the neck of Femur (Right), Punctured Wound over the Medical Aspect of Right Knee. A procedure called DTH Fixation of Right Hip with Derotation Cancellous Screw was done on 12.01.2004. Though he was initially admitted for seven days, again for 15 days, 10 days and 2 days, totally, for 34 days, the appellant took treatment as inpatient. The treatment was proved by Ex.P10-Discharge Summary, as marked through PW.2 and thereafter, Exs.P16 to P18-Discharge Summary. It is also noted that there was a non-union of fibular graft. Therefore, the Tribunal determined the disability at 55% and accordingly, awarded a sum of Rs.55,000/- (Rupees Fifty Five Thousand only) for disability.

3. As per the medical bills Exs.P9 to P11, P11 to P14, a sum of **Rs.1,20,000/-** (Rupees One Lakh Twenty Thousand only) was awarded towards medical expenses and the same is confirmed.

4. A sum of **Rs.3,400/-** (Rupees Three Thousand Four Hundred only) awarded by the Tribunal towards loss of income during treatment period is confirmed.

5. Only a sum of Rs.5,000/- (Rupees Five Thousand only) was awarded by the Tribunal towards pain and sufferings and the same is enhanced by this Court to **Rs.15,000/-** (Rupees Fifteen Thousand only).

6. No amount was awarded by the Tribunal towards extra-nourishment and therefore, a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) is awarded. No amount was awarded by the Tribunal towards loss of amenities and a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) is awarded. No amount was awarded by the Tribunal towards transportation charges and therefore a sum of **Rs.10,000/-** (Rupees Ten Thousand only) is awarded. Accordingly,



the award amount of Rs.1,83,400 (Rupees One Lakh Eighty Thousand Four Hundred only) is enhanced to **Rs.2,33,400/-** (Rupees Two Lakhs Thirty Three Thousand Four Hundred only).

7. Accordingly, the Appellant/claimant is entitled to a sum of **Rs.2,33,400/-** (Rupees Two Lakhs Thirty Three Thousand Four Hundred only) and the rate of interest at 7.5% per annum awarded by the Tribunal remains unaltered.

8. In the result,

(i) this Civil Miscellaneous Appeal is allowed. No costs.

(ii) The appellants/claimants are entitled to a sum of **Rs.2,33,400/-** (Rupees Two Lakhs Thirty Three Thousand Four Hundred only) along with the interest at the rate of 7.5% per annum from the date of petition till date of realisation and also proportionate costs.

(iii) The first respondent/Insurance Company is directed to deposit the entire award amount as per the order of this Court along with interest and costs to the credit of M.C.O.P.No.731 of 2005 on the file of the Motor Accident Claims Tribunal/ Additional District and Sessions Court, Fast Track Court No.3, Madurai, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the amount to the legal representatives of the deceased-victim **equally** through their respective personal Savings Bank Account Numbers through *RTGS/NEFT* system within a period of **two weeks** thereafter.

(v) The shares of the minors respondents 2 and 3/claimants 2 and 3 are directed to be kept in an interest bearing Fixed Deposit in any one of the Nationalised Banks under the renewable scheme, till they attain majority and the first respondent/first claimant - mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest thereon once in three months for their welfare.

(vi) The appellants/claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment.

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar



To

1. The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.3,
Madurai.

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

+2cc to Mr.R.Nandakumar, Advocate Sr.No. 6620

+1cc to Mr.K.Baskaran, Advocate Sr.No. 6723

+1cc to Mr.J.S.Murali, Advocate Sr.No. 6851

JAM/07.03.17 /PM-PNS/SAR 2/ 4p-7c

C.M.A (MD) No.1632 of 2013
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