



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1026 of 2011

Tamimul Ansari

... Appellant/Petitioner

Vs.

1.K.Kavitha

2.The Divisional Manager,
National Insurance co Limited,
Thanjavur.

3.NavaskhAn

4.The Oriental Insurance Limited,
South Main Street, Thanjavur. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2011 in M.C.O.P.No.331 of 2008 on the file of Motor Accident Claims Tribunal Cum Principal Sub Court, Thanjavur.

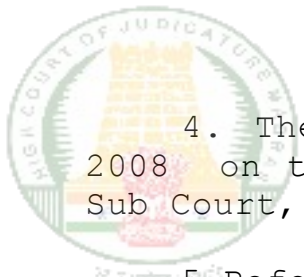
For Appellant	: Mr.K.Govindarajan
For R-1 & R-3	: No appearance
For R-2	: Mr.J.S.Murali
For R-4	: Mr.C.Jawahar Ravindran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award made in M.C.O.P.No.331 of 2008 on the file of Motor Accident Claims Tribunal Cum Principal Sub Court, Thanjavur, dated 09.04.2011.

2. It is a case of injury sustained by the injured/claimant in an accident, which took place on 19.07.2006 at about 3.00 a.m near Chennai- Thintivanam National Highways opposite to Saram Primary Health Centre.

3. It is the case of the injured claimant before the Tribunal that on the date of accident, when the petitioner was travelling in a Tempo Travels Van bearing Registration No.TN-04-P-5515 belonging to the third respondent, the driver of the lorry bearing registration No.TN-27-B-9343 belonging to the first respondent came in a rash and negligent manner and dashed against the Tempo Travels Van and in the said accident, the claimant sustained grievous injuries.



4. The claimant filed an application in M.C.O.P.No.331 of 2008 on the file of Motor Accident Claims Tribunal Cum Principal Sub Court, Thanjavur, seeking compensation.

5. Before the Tribunal, on the side of claimant two witnesses as P.Ws.1 and 2 were examined and twenty three documents as Ex.A1 to Ex.A23 were marked. On the side of the respondent neither witness was examined nor any document was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidences 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 lorry and therefore, directed the Insurance Company to pay the compensation of Rs.94,067/-.

7. Against which, the appellant/claimant filed this present appeal challenging the quantum.

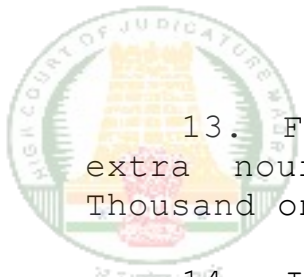
8. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference by this Court.

9. Heard the submissions made on either side and perused the materials available on record.

10. A perusal of paragraph No.8 of the order of the Tribunal would show that though in the disability certificate the doctor assessed disability based on pain and suffering at 25%, the Tribunal has taken only 21%. Doctor is the competent authority to assess the disability and considering the gravity of the disability, the doctor has assessed disability at 25% and there cannot be any dispute over it. Further, the Tribunal awarded only Rs.1500/- for each percentage of disability, which is very low. As per the judgment of this Court in **National Insurance Company Limited v. G.Ramesh and another** reported in **2013 (2) TN MAC 583**, a sum of Rs.3,000/- (Rupees Three Thousand only) has to be awarded for 1% disability.

11. Considering the above stated facts, the amount awarded under the head 'for disability' is modified by calculating disability at 25% and by awarding Rs.3000/- for each percentage of disability, which comes to Rs. 75,000/- (25 X 3000).

12. On a perusal of the award shows that the Tribunal has awarded Rs.15,000/- towards pain and suffering. A sum of **Rs.50,000/-** (Rupees Fifty Thousand only) is awarded by this Court towards pain and suffering.



13. Further, the Tribunal has awarded Rs.15,000/- towards extra nourishment. A sum of **Rs.25,000/-** (Rupees Twenty five Thousand only) is awarded by this Court .

14. In view of the settled position of law, this Court modifies the award of the Tribunal, as under:-

S.No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1.	For disability	31,500	75,000	Enhanced
2.	For extra nourishment	15,000	25,000	Enhanced
3.	For pain and suffering	15,000	50,000	Enhanced
4.	Attendant charges	4,500	4,500	confirmed
5.	Medical expenses	28,067	28,067	confirmed
	Total	94,067	1,82,567 rounded off to 1,83,000-	Enhancing Rs. 88,933/-

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.94,067/-** (Rupees ninety four thousand and sixty seven only) to a sum of **Rs.1,83,000/-** (Rupees one lakh and eight three 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; No costs.

(ii) The Insurance Company is directed to deposit the award amount 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 claimant is permitted to withdraw the award amount with accrued interests and costs, without filing any formal application before the Tribunal.

Sd/-

Assistant Registrar(cs-II)



To,

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.

Copy to

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

+1cc to Mr.K.Govindarajan, Advocate Sr.No.75592
+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.76181
+1cc to Mr.J.S.Murali, Advocate Sr.No.75840

CM

VB/KK/SAR1/23/10/2017/4P/6C

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