

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

Dated : 02.08.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A.Nos.439 and 440 of 2013****and****M.P.(MD)Nos.1 and 1 of 2013**

WEB COPY

The Oriental Insurance Co.Ltd.,
Represented by its Branch Manager,
Branch Office,
Bangur Dharmasala Building,
3rd Floor, 6A West Veli Street,
Madurai 625 001.

.. Appellant / Respondent No.2 in both the C.M.As.

Vs.

S.Murugesan.. 1st respondent /Petitioner in C.M.A.(MD)No.440/2013

V.Vivekanandan..1st respondent /Petitioner in C.M.A.(MD)No.439/2013

3.M/s.Bavani Plywoods & Timbers
Represented by its Manager,
49/2A Thanjavur Main Road,
Thiruvarambur, Trichi - 620 013.

..Respondent No.2/Respondent No.1 in
both C.M.As.

Common Prayer:- Appeals filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P. Nos.168 and 159 of 2008 dated 27.04.2010 on the file of the Motor Accident claims Tribunal cum Sub Judge, Periakulam.

For Appellant in
both CMAs : Mr.C.Jawahar Ravindran

For R1 in
both CMAs : Mr.K.Kumaravel

For R2 in
both CMAs : Given Up (vide EB)

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the judgment, dated 27.04.2010, passed in M.C.O.P.Nos.168 and 159 of 2008 by the Motor Accident claims Tribunal cum Sub Judge,



Periakulam.

2.The case of the claimants in the petitions is briefly as follows:

On 14.07.2008, the petitioner in MCOP.No.159 of 2008 was driving TNSTC bus bearing registration No.TN 57 N 1204, as a driver, where the petitioner in MCOP.No.168 of 2008 was a conductor, from Theni to Chennai. At about 9.45 p.m., when the bus was coming at Vathalagundu-Dindigul main road and nearing Savugampatti, a lorry bearing registration No.NTS.45 D 9171, which was coming from the opposite side and driven by its driver, in a rash and negligent manner, dashed against the bus, as a result of which, the bus was capzised. In the said accident, the petitioners/claimants sustained grievous injuries. Hence, they filed claim petitions before the Tribunal claiming a sum of Rs.5,00,000/- and Rs.5,00,000/- respectively, as compensation.

3.Before the Tribunal on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P17 were marked. On the side of the respondents, no witness was examined and no document was filed.

4.On consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.3,58,690/- in MCOP.No.159 of 2008 and Rs.3,30,730/- in MCOP.No.168 of 2008 with interest at the rate of 7%. Challenging this award, the present appeal has been filed by the Insurance Company.

5.Heard the learned counsel for the Appellant and the learned counsel for the respondent and also perused the materials available on record.

6.The learned counsel for the appellant/Insurance 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 therefore the Tribunal has not right in applying multiplier method and hence, as per the above Jugement a sum of Rs.3,000/- should be fixed per 1% percentage of disability, but the Tribunal has erroneously adopted the multiplier method.

7.Considering the above submission and also considering the Judgment of this Court, I am of view that the compensation awarded for permanent 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 permanent disability of 36% ~~Rs.1,08,000/-~~ is reduced to Rs.1,08,000/- in C.M.A.(MD)No.439 of 2013 (M.C.O.P.No.168 of 2008) and the award of the trial Court



regarding permanent disability of 36% at Rs.2,53,440/- is reduced to Rs.1,08,000/- in C.M.A.(MD)No.440 of 2013 (M.C.O.P.No.159 of 2008) and in the other heads, it has to be enhanced.

8. In C.M.A. (MD) No.439 of 2013:

In view of the settled position of law, this Court modifies the award of the Tribunal in the head of permanent disability 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 pain and sufferings	30,000	50,000	enhanced
2.	For permanent disability (36%)	2,62,080	1,08,000	reduced
3.	For medical expenses	27,000	27,000	confirmed
4.	For attendant charges	3,000	5,000	enhanced
5.	For transportation	2,400	10,000	enhanced
6.	For extra nourishment	5,000	10,000	enhanced
7.	For damage to clothes	250	250	confirmed
8.	For physiotherapy treatment	1000	10,000	enhanced
9.	For Future Medical Expenses	-	25,000	granted
	Total	Rs.3,30,730	Rs.2,45,250	By reducing a sum of Rs.85,480/-

9. In the result, this Civil Miscellaneous Appeal is disposed of reducing the award of the Tribunal from Rs.3,30,730/- (Rupees Three Lakhs Thirty Thousand Seven Hundred and Thirty only) to a sum of Rs.2,45,250/- (Rupees Two Lakhs Forty Five Thousand Two Hundred and Fifty only) along with interest at the rate of 7% per annum from the date of petition till date of realisation and proportionate costs. The appellant/Insurance Company is directed to deposit the entire award amount of Rs.2,45,250/- (Rupees Two

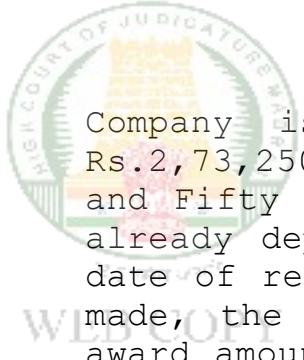
Lakhs Fourty Five Thousand Two Hundred and Fifty only) with accrued interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

10. In C.M.A. (MD) No. 440 of 2013:

In view of the settled position of law, this Court modifies the award of the Tribunal under the head for permanent disability 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 pain and sufferings	30,000	50,000	enhanced
2.	For permanent disability (36%)	2,53,440	1,08,000	reduced
3.	For medical expenses	60,000	60,000	confirmed
4.	For attendant charges	2,000	10,000	enhanced
5.	For transportation	8,000	10,000	enhanced
6.	For extra nourishment	5,000	10,000	enhanced
7.	For damage to clothes	250	250	confirmed
8.	For Future Medical Expenses	-	25,000	granted
	Total	Rs.3,58,690	Rs.2,73,250	By reducing a sum of Rs.85,440/-

11. In the result, this Civil Miscellaneous Appeal is disposed of reducing the award of the Tribunal from Rs.3,58,690/- (Rupees Three Lakhs Fifty Eight Thousand Six Hundred and Ninety only) to a sum of Rs.2,73,250/- (Rupees Two Lakhs Seventy Three Thousand Two Hundred and Fifty only) along with interest at the rate of 7% per annum from the date of petition till date of realisation and proportionate costs. The appellant/Insurance



Company is directed to deposit the entire award amount of Rs.2,73,250/- (Rupees Two Lakhs Seventy Three Thousand Two Hundred and Fifty only) with accrued interests and costs, less the amount already deposited, if any, within a period of six 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Judge,
Motor Accident claims Tribunal Periakulam.

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

+2cc to M/S.C.JAWAHAR RAVINDRAN, Advocate SR.Nos.69901,69902
+2cc to M/S.K.KUMARAVEL, Advocate SR.No.70538,70540

rj2

MAS/MR-KKR/SAR2:13.09.2017:5P-7C

C.M.A.Nos.439 and 440 of 2013

02.08.2017