



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.829 of 2013

Ganesan ... Appellant/Claim Petitioner
Vs.

1.P.Babu

2.The Branch Manager,
National Insurance Company Limited,
Ramanathapuram, Coimbatore.

3.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Pudukottai. ...Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in MCOP.No.284 of 2010, dated 27.06.2012, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Pudukottai and allow this appeal.

For Appellant	: Mr.R.Devaraj
For R1 and R3	: No appearance
For R2	: J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the Judgment and decree passed in M.C.O.P.No.284 of 2010 dated 27.06.2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Pudukottai.

2.It is a case of an accident, causing injury which took place on 28.05.2008 at 03.45 p.m, on Pudukottai - Thanjavur main road near Mullur.

3. It is the case of the injured claimant before the Tribunal that when the claimant was travelling in a Transport Corporation Bus bearing Registration No. TN-55-N-0065, the driver of the Trailer Vehicle bearing Registration No. TN-28-J-8919 drove the vehicle in a rash and negligent manner neither rasing horn nor



following the traffic rules of the road, and dashed against the bus, due to which the injured claimant sustained multiple grievous injuries all over the body and became disabled.

4.The claimant filed an application in M.C.O.P.No.284 of 2010 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Pudukottai, seeking compensation.

5.Before the Tribunal, the appellant/claimant examined twenty five witnesses as P.Ws.1 and 25 and marked sixty two documents as Ex.P.1 to Ex.P.62 On the side of the respondent/Transport Corporation, neither witness was examined nor any document was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence 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 first respondent Heavy Load Trailer Vehicle and therefore directed the first and second respondents to pay a sum of Rs.1,35,000/-, as compensation.

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

8.The learned counsel for the appellant/claimant would submit that the appellant sustained 39% disability and the Tribunal has reduced the same to 34% without any basis and awarded compensation. The Tribunal ought to have awarded compensation towards the medical bills accepting the genuineness of the same and also Tribunal ought to have awarded compensation towards future medical expenses. The compensation awarded under other heads are also on lower side and therefore, the compensation awarded by the Tribunal has to be enhanced.

9.The learned counsel appearing for the second respondent/Insurance Company would contend that the Tribunal awarded a just and reasonable compensation and the same does not warrant any interference.

10. This Court heard the submissions made on either side and perused the materials available on record.

11.As rightly contended by the learned Counsel for the appellant, while the Doctor determining the disability of the injured claimant at 39%, the Tribunal has erred in reducing the same to 34%. Hence, this Court takes the disability of the appellant as 39%, as determined by Doctor. The Tribunal has erred in awarding Rs.2,000/- for 1% disability. In the judgment of this Court in National Insurance Company Ltd. rep. by its Branch Manager v. G.Ramesh and another reported in 2013 (2) 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 1% disability. Hence, for disability, a sum of Rs.1,17,000/- (Rs.3000x39) is awarded. The Tribunal has awarded Rs.20,000/- and considering the nature of injuries the claimant sustained and the treatment he had undergone, Rs.1,00,000/- is awarded towards pain and sufferings. The Tribunal has awarded Rs.4,000/- towards extra nourishment and Rs.3,000/- towards Transportation and the same is enhanced to Rs.20,000/- and 10,000/- respectively. The Tribunal has not awarded any compensation towards loss of income, for 23 days, which is said to be the period the claimant was under treatment and considering the same, Rs.5,000/- is awarded towards the same. The compensation awarded by the Tribunal under other heads are hereby confirmed.

12. This Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	For disability	68,000	1,17,000	Enhanced
2	Pain and sufferings	20,000	1,00,000	Enhanced
3	Extra nourishment	4,000	20,000	Enhanced
4	Transportation	3,000	10,000	Enhanced
5	Medical bills	40,000	40,000	confirmed
5	For loss of income	--	5,000	Awarded
	Total	1,35,000	2,92,000	By enhancing Rs.1,57,000/-

13. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,35,000/- (Rupees One lakh thirty five thousand and only) to a sum of Rs.2,92,000/- (Rupees Two Lakhs ninety two 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;

(ii) The first and second respondents are directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of eight 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.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

To,

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Pudukottai.

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

+1cc to M/S.R.Devaraj, Advocate SR.No. 79807

+1cc to M/S.J.S.Murali, Advocate SR.No. 80163

+1cc to M/S.D.Sivaraman, Advocate SR.No. 79943

C.M.A (MD) No.829 of 2013
19.09.2017

dsk

JM/MR KKR/SAR 1/23.10.2017/4P/6C