



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.874 of 2013

WEB COPY

Satheeskumar

.. Appellant/Claimant

Vs.

1.Thaivendran

2.The Branch Manager,

The Oriental Insurance Company Limited,

2nd Floor, Sree Vijay Complex,

Theni, Theni District.

.. Respondents/Respondents

(1st Respondent remained ex-parte before the Tribunal

Hence, notice to the first respondent may be dispensed with)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P.No.15 of 2011 dated 17.02.2012 on the file of the Motor Accident Claims Tribunal/Additional District Judge (Fast Track Court), Virudhunagar.

For Appellant : Mr.M.Jegadeesan

For Respondent No.2 : Mr.K.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant against the award made in M.C.O.P.No.15 of 2011 dated 17.02.2012 on the file of the Motor Accident Claims Tribunal Additional District Judge (F.T.C), Virudhunagar.

2. The facts mentioned in the Claim Petition are as follows:

i) On 21.11.2009 at about 10.00 p.m at Madurai Melur Main road when the petitioner was travelling in his two wheeler with slow speed with due care and caution keeping the left side of the road, the bus bearing Registration No. TN-59-W-8744 was coming in a rash and negligence without following traffic Rules and the driver suddenly stopped the bus without giving signal, result of which, the petitioner's vehicle dashed against the back side of the bus and the petitioner sustained grievous injuries. A criminal case had been registered against the first respondent driver in Gopi police Station in Crime No.210 of 2009 under Sections 279 and 337 IPC.



ii) The petitioner suffered untold pain and suffering at the time of undergoing treatment. Before the accident, the petitioner was hale and healthy and was earning Rs.8,000/- per month. The accident occurred only due to the negligence of the driver of the bus and the same was insured with the 2nd respondent and hence the second respondent is liable to compensate the petitioner. Hence the petitioner claimed Rs.5,00,000/- with interest and cost.

3. Before the tribunal, on the side of the claimant, 3 witnesses were examined and Exs.P.1 to P.10 were marked and on the side of the respondents, they did not let in any oral and documentary evidence.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimant and second respondent and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the bus, which is insured with the second respondent/Insurance Company to pay a sum of Rs.2,00,691/-, as compensation.

5. Heard Mr.M.Jegadeesan learned counsel appearing for the appellant and Mr.K.Baskaran learned counsel appearing for the second respondent and perused the records.

6. Though the learned counsel for the appellant/ claimant questioned the quantum of compensation on various grounds, he has specifically argued that the Tribunal erroneously has taken 43% disability instead of 50%. He would further submit that doctor is the competent authority to assess the disability and considering the gravity of the disability, the doctor has assessed disability at 50% and there cannot be any dispute over it. Further, the Tribunal awarded only Rs.1000/- 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.

7. Considering the above stated facts, the amount awarded under the head 'for partial and permanent disability' is modified by calculating disability at 50% and by awarding Rs.3000/- for each percentage of disability, which comes to Rs. 1,50,000/- (50 X 3000). Apart from that, this Court grants Rs.20,000/- for future medical expenses, since a rod has been fixed in the leg of the injured claimant. In all other heads, the amounts awarded by the Tribunal stands unaltered.

8. After modification, the total compensation is enhanced to **Rs.3,28,000/-** from Rs.2,00,691/- in the following manner:

Heads	Amount
For Disability (50% X 3,000)	Rs. 1,50,000/-
Futur medical expenses	RS. 20,000/-
For pain and suffering	Rs. 20,000/-
Extra Nourishment	Rs. 5,000/-
Transportation	Rs. 1,000/-
Damage to cloth	Rs. 1,000/-
Medical expenses	Rs. 1,18,691/-
Loss of earnings	Rs. 12,000/-
Total	Rs. 3,27,691/- rounded off to Rs.3,28,000/-

9. The second respondent Insurance Company is directed to deposit the entire award amount, less the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of copy of this judgment. On such deposit being made, the claimant is entitled to withdraw the entire award amount along with proportionate interest and costs, without filing formal petition.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed in M.C.O.P.No.15 of 2011 dated 17.02.2012 on the file of the Motor Accident Claims Tribunal/Additional District Judge (Fast Track Court), Virudhunagar., is hereby modified and there shall be an award for a sum of Rs.3,33,000/-. The appellant shall pay the court fee for the enhanced amount within a period of four weeks from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar

To,

The Additional District Judge (Fast Track Court),
The Motor Accident Claims Tribunal, Virudhunagar.

COPY TO:

The record Keeper,

V.R Section, Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.K.BHASKARAN, Advocate SR.No.73030

+1cc to M/S.M.JEGADEESAN, Advocate SR.No.72997

cm

MAS/KK/SAR2:08.09.2017:3P-5C

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