



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD)No.983 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
Rajapalayam.

... Appellant/3rd Respondent.

Vs.

1.M.H.Halith
2.Vellathurai
3.Minor Sri.Vethika

...1st Respondent/Petitioner
...2nd Respondent/1st Respondent
...3rd Respondent/2nd Respondent

4.The Correspondent,
K.M.V.K.Matriculation School,
Railway Road,
Tenkasi.

...4th Respondent/4th Respondent

(2,3, 4th respondents are remained
ex-parte before the lower Court).

5.The Divisional Manager,
Bajaj Alliance Insurance Company Limited,
T.P.K.Road,
Madurai.

...5th Respondent/5th Respondent

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act 1988, against the award made in M.C.O.P.No.84 of 2011, dated 31.01.2013 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Tenkasi.

For Appellant : Mr.K.Bhaskaran
For R1 : Mr.D.Venkatesh
For R2 & R4 : No appearance
For R5 : Mr.G.Maruthiah

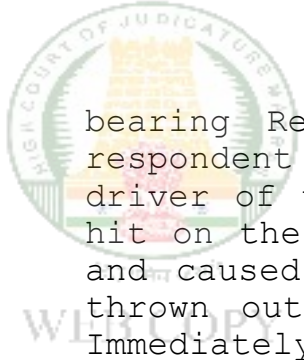
J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 31.01.2013 in M.C.O.P.No.84 of 2011 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Tenkasi.

2. The brief facts of the case is as follows:

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

It is a case of an injury took place on 07.02.2011 at about 09.15 a.m., when the injured claimant was travelling in a bus



bearing Registration No.TN 67 A Z 2608 belonging to the third respondent on Tenkasi - Madurai Main Road, near Duraisamipuram, the driver of the bus drove the bus in a rash and negligent manner and hit on the left side of the van belonging to the fourth respondent and caused the accident. Due to the said impact, the victim was thrown out of the bus and sustained injuries all over the body. Immediately, he was admitted in Government Hospital, Tenkasi and thereafter, he was admitted in Medial College Hospital, Trivandram and due to the grievous injuries, his left leg was removed. At the time of accident, the victim was studying D.M.E., II Year in U.S.P. Polytechnic. Therefore, the victim filed a petition in M.C.O.P.No.84 of 2011 before the Motor Accident Claims Tribunal, Principal Sub Judge, Tenkasi claiming a sum of Rs.50,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.Ws.1 and 2 were examined and 15 documents viz., Exs.P1 to P15 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and 2 documents viz., Exs.R1 and R2 were marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the third respondent and directed the appellant/Insurance Company to pay a sum of Rs.12,22,416/- as compensation with interest at the rate of 7.5%. Against which, the appellant/Insurance Company has filed the present appeal by questioning the quantum of compensation.

5. The learned counsel for the appellant/Insurance Company would submit that at the time of accident, the victim was a student and as per the Supreme Court ruling, the income may be fixed as Rs.3,500/- per month, but the Tribunal has fixed the income as Rs.10,000/- which is excessive. He would further submit that the loss of amenities fixed by the Tribunal is also very excessive. Hence, he seeks interference of this Court to the award passed by the Tribunal.

6. The learned counsel for the victim/first respondent would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the third respondent and arrived at correct compensation under various heads. Hence, he prays for dismissal of this appeal.

7. Heard the learned counsel appearing for both sides and perused the materials available on record.

8. This Court is of the view that the accident had occurred only due to the rash and negligent driving of the driver of the

third respondent bus. The victim was studying diploma and due to the accident, he lost his leg which cannot be compensated by money and therefore the income fixed by the Tribunal is reasonable. As far as the loss of amenities are concerned, this Court is of the view that it is on the higher side and hence, the loss of amenities is reduced from Rs.1,50,000/- to Rs.1,00,000/- and the other heads are confirmed.

9. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing 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	9,18,000	9,18,000	confirmed
2.	For love and affection	1,00,000	1,00,000	confirmed
3.	For loss of amenities	1,50,000	1,00,000	reduced
4.	For attendant charges	15,000	15,000	confirmed
5.	For Nutrition	15,000	15,000	confirmed
6.	For Medical Bills	19416	19,416	confirmed
7.	For Transportation	5000	5000	confirmed
	Total	12,22,416	11,72,416	By reducing a sum of Rs.50,000/-

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.12,22,416/- (Rupees Twelve Lakhs Twenty Two Thousand and four hundred and sixteen only) to a sum of Rs.11,72,416/- (Rupees Eleven Lakhs Seventy Two Thousand and four hundred and sixteen 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 appellant/Insurance Company is directed to deposit the entire award amount of Rs.11,72,416/- (Rupees Eleven Lakhs Seventy Two Thousand and four hundred and sixteen only) 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 the judgment. On such deposit being made, the victim/first respondent is permitted to withdraw the award amount with accrued interests and costs without filing any formal permission petition



before the Tribunal. No Costs. Consequently, the connected
M.P.No.1/2013 is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

WEB COPY

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Motor Accident Claims Tribunal, Tenkasi.

Copy to:

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

+1CC to Mr.G.Maruthiah, Advocate, SR.No. 77264
+1CC to Mr.K.Bhaskaran, Advocate, SR.No. 76729
+1CC to Mr.D.Venkatesh, Advocate, SR.No. 77283

C.M.A. (MD) No.983 of 2013
05.09.2017

akv
KK/SV MMS/SAR 1/08.01.2018/4P/6C