



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 550 of 2011

Periyanayaki ... Appellant / Petitioner
Vs.

1.Subba Rao
2.National Insurance Company Ltd.,
by its Divisional Manager,
Thanjavur. ... Respondents/respondents
(The 1st respondent set already ex-parte in the trial court)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.07.2007 made in M.C.O.P.No.369 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Kumbakonam.

For Appellant	:Mr.R.Raja Ramani
For R-1	:Exparte
For R2	:Mr.A.S.Mathialagan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the Judgment and Decree dated 11.07.2007 made in M.C.O.P.No.369 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Kumbakonam.

2. It is a case of injury caused due to the accident took place on 28.01.2004 at about 1.00 a.m, near Inam Kulathoor, Palani Andavar Chamber, in which, the driver of the lorry bearing Registration AP-27-T-9699, which is insured with the second respondent-Insurance Company, drove the vehicle in a rash and negligent manner and dashed against the car due to which the claimant sustained head injuries.

3. The claimant filed an application in M.C.O.P.No.369 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Kumbakonam, seeking compensation.

4. Before the Tribunal, the claimant examined two witnesses as P.Ws.1 and 2 and marked eight documents as Ex.P.1 to Ex.P.8. The respondents did not let in any oral and documentary evidence.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and the 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 lorry, which is insured with the second respondent and directed the second respondent/Insurance Company to pay a sum of Rs.1,06,000/-, as compensation.

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6. Against which, the appellant/claimant has filed this present appeal on the ground that the Tribunal ought to have fastened the entire liability on the respondents only and the Tribunal ought to have awarded compensation for pain and suffering and loss of amenities and the Tribunal ought to have awarded more compensation while adopting the notional income.

7. The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.

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

11. On a perusal of the order of the Tribunal, it is seen that the Tribunal has perused the oral and documents available before it and rightly fastened the liability on both vehicles. There is no infirmity in respect of liability.

12. However, the learned counsel for the appellant questioned the quantum by submitting that no amount has been awarded for loss of amenities and for pain and suffering. Considering the submission of the learned counsel for the appellant/claimant, this Court is inclined to grant Rs.10,000/- each for the abovesaid two heads. In the considered opinion of this Court, the amounts awarded under the other heads are just and reasonable and the same does not require interference at the hands of this Court.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Motor Accident Claims Tribunal, Principal Subordinate Court, Kumbakonam, made in M.C.O.P.No.369 of 2005, dated 11.07.2007, is hereby modified. The total compensation is enhanced to **Rs.1,26,000/-** from **Rs.1.06,000/-**. The 2nd Respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the appellant/claimant is permitted to withdraw the award amount, with proportionate interests and costs without filing formal permission petition. No Costs.

Sd/-

Assistant Registrar(WRITS)

/True Copy/



To,

The Motor Accidents Claims Tribunal,
Principal Subordinate Court, Kumbakonam.

Copy to : The Section Officer, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.SIVATHILAKAR Advocate in SR. No. 71111
+1cc to Mr.A.S.MATHIYALAGAN Advocate in SR. No. 71030

CM
JS/GT/SAR.2/11.09.2017/3P-5C

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