



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

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**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.M.A(MD)No.788 of 2011**  
**and M.P(MD).No.1 of 2011**

The Branch Manager,  
The Oriental Insurance Company Ltd.,  
Pudukkottai.

... Appellant / 2<sup>nd</sup> Respondent

Vs.

1.Tr.P.Palanichamy

...1<sup>st</sup> Respondent / Petitioner

2.Tr.R.Shanmughasundharam

(2<sup>nd</sup> respondent remained exparte before the Lower Court)

...2<sup>nd</sup> Respondent/1<sup>st</sup> Respondents

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the Award made in M.C.O.P.No.152/2008, dated 22.03.2011, on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Pudukkottai.

For Appellant

: Mr.K.Bhaskaran

For R1

: Mr.V.R.Shanmuganathan

### **J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company against the award made in M.C.O.P.No.152 of 2008, dated 22.03.2011, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Pudukkottai.

2. It is a case of injury caused in the accident that took place on 15.12.2006 at about 05.00 a.m. When the claimant was riding in a bicycle, carrying milk cane in the carrier on the Arasamalai road, near Ayyanar Temple, a lorry bearing Registration No.T.N.55-J-5153, which is insured with the appellant-Insurance Company, came in a rash and negligent manner and dashed against the claimant and he sustained injury. Hence, the injured claimant filed an application in M.C.O.P.No.152 of 2008, on the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Pudukkottai, seeking compensation.



3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and sixteen documents viz., Exs.P.1 to P.16 were marked and on the side of the respondents, no witness was examined and no document was marked.

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4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimant 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 offending vehicle and directed the appellant Insurance Company to pay a sum of Rs.3,71,100/- to the claimant and then recover the same from the first respondent/owner of the offending vehicle.

5. Against which, the appellant/Insurance Company filed the present appeal questioning the quantum of compensation by submitting that the Tribunal ought not to have applied multiplier method.

6. Though the learned counsel for the appellant raised various grounds, he would mainly contend that the disability certificate did not show whether the injured sustained permanent disability or partial disability. According to him, the learned Judge did not follow the various judgments of this Court in applying multiplier method for the injuries caused.

7. The learned counsel appearing for the claimant would submit that the claimant has suffered 40% disability and hence, he is not able to do work. He would further contend that the Doctor was not cross-examined to disprove that the claimant's disability was permanent disability and therefore, the learned Judge has rightly assessed and correctly applied the multiplier method. He submits that the Tribunal has awarded a just and reasonable compensation and interference by this Court is not necessary.

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

9. Wound Certificate shows the nature of injuries. But the Doctor has not assessed whether the injury is the permanent injury or partial injury and therefore, in my considered opinion, the learned Judge ought not to have applied multiplier method.

10. By relying on the judgment **National Insurance Company Limited v. G.Ramesh and another** reported in **2013 (2) TN MAC 583**, this Court is inclined to grant a sum of Rs.3,000/- (Rupees Three Thousand only) for 1% disability. A sum of Rs.1,20,000/- ( $3000 \times 40\%$ ) is awarded for 40% disability sustained by the injured claimant.



11. According to me, the amount awarded under the head 'Pain and suffering' is very low. I am inclined to enhance the same to Rs.50,000/-. The Tribunal has not awarded any amount for loss of amenities. This Court grants a sum of Rs.50,000/- towards loss of amenities. The amount awarded towards transportation, medical expenses and extra nourishment at Rs.5000/- is enhanced to a sum of Rs.28,400/-. A sum of Rs.1,42,700/- granted as per medical bills is confirmed.

12. In view of the above, this Court confirmed the total compensation but modified the same under different heads:

| S.N<br>o | Description                                        | By Tribunal<br>Rs . | By this Court<br>Rs . | Result    |
|----------|----------------------------------------------------|---------------------|-----------------------|-----------|
| 1        | For disability                                     | 2,18,400/-          | 1,20,000              | reduced   |
| 2        | For Pain and suffering                             | 5,000               | 50,000                | enhanced  |
| 3        | Loss of amenities                                  | -                   | 30,000                | granted   |
| 4        | Transportation, medical expenses&extra nourishment | 5,000               | 28,400                | enhanced  |
| 5        | Medical Bills                                      | 1,42,700            | 1,42,700              | confirmed |
|          | Total                                              | 3,71,100            | 3,71,100              | same      |

13. In the result,

(i) This Civil Miscellaneous Appeal is allowed by modifying the amount on various heads. The Appellant/Insurance Company is directed to deposit the entire award amount 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 claimant is permitted to withdraw the 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 (CO)

/True copy/



To

The Motor Accidents Claims Tribunal cum  
Chief Judicial Magistrate,  
Pudukkottai.

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+ 1 CC TO MR.K.Bhaskaran, ADVOCATE IN SR No.76805

+ 1 CC TO MR.V.R.Shanmuganathan, ADVOCATE IN SR No.77248

cm

MK/KK/SAR-2/07.11.2017/4P/4C

**C.M.A(MD)No.788 of 2011**

**and**

**M.P(MD) .No.1 of 2011**

**06.09.2017**