



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.928 of 2011

N.R.Krishnamohan

: Appellant/Petitioner

Vs.

1.P.Daniel Thangaraj

2.United India Insurance Company,
Zonal Manager,
West Veli Street,
Madurai-1.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to enhance the award from Rs.3,00,552/- to Rs.18,50,000/- with 12% interest passed in MCOP No.1429 of 2002 on the file of the MACT-cum-IV Additional Sub Court, Madurai, dated 05.03.2009.

For Appellant

: Mr.K.Samidurai

For 1st Respondent

: No Appearance

For 2nd Respondent

: Mr.S.Natarajan

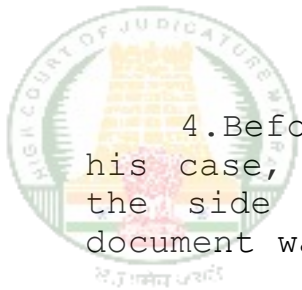
JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

Being dissatisfied with the award passed by the Motor Accident Claims Tribunal (4th Additional Sub Court), Madurai, in M.C.O.P.No.1429 of 2002, dated 05.03.2009, the claimant as appellant has filed this appeal seeking enhancement of compensation.

2.The case of the claimant is that on 22.12.2000 at about 6.40 hours, when he was travelling in a Two-Wheeler bearing Registration No.TN-31-U-8129 as a pillion rider from S.S.Colony to Arasaradi, a Van bearing Registration No.TN-58-A-6978 owned by the first respondent, insured with the 2nd respondent dashed against the Two Wheeler. In the impact, the claimant sustained grievous injuries and he was immediately taken to Government Rajaji Hospital and thereafter, he was admitted in the Senthil Nursing Home, Madurai, where he took treatment as inpatient till 21.01.2001. It is further stated that on 23.12.2000, he underwent surgery. He claimed compensation of Rs.18,50,000/- alleging that the accident was due to the rash and negligent driving of the driver of the Van.

3.The 2nd respondent/Insurance Company resisted the claim disputing the manner of the accident and their liability to pay the compensation.



4. Before the Tribunal, the claimant in order to substantiate his case, examined three witnesses and marked Exs.P1 to P11. On the side of the respondents, no witness was examined and no document was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the accident has taken place only due to the rash and negligent driving of the driver of the Van and awarded compensation of Rs.3,00,552/- along with interest @ 7.5% p.a.

6. The learned counsel for the appellant would submit that there is no dispute that the claimant was working as a Chief Chemist in the Cooperative Sugar Mills Ltd., at Pandiarajapuram and after the accident, he could not continue his employment, but the tribunal without taking into consideration the above aspect and the nature of the injuries sustained by the claimant, has awarded lesser compensation.

7. Per contra, the learned counsel appearing for the second respondent contended that in the claim petition itself, the claimant admits that after the accident, he continued to work as a Chief Chemist and the claim that he lost employment due to the injuries sustained in the accident was not proved. Since, there is no loss of income, the award of the tribunal does not warrant interference by this Court.

8. Heard Mr.K.Samidurai, learned counsel for the appellant and Mr.S.Natarajan, learned counsel for the 2nd respondent and perused the materials available on record.

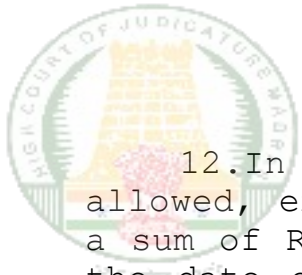
9. In the case on hand, the claimant, who examined himself as P.W.1 has stated that on 22.12.2000 when he was travelling in a Two wheeler as a pillion rider, he met with an accident and sustained grievous injuries and immediately, he was admitted in the Government Rajaji Hospital, Madurai and on 23.12.2000, he underwent surgery and thereafter, he was taking treatment as inpatient in Senthil Nursing Home, till 21.01.2001. Again on 21.02.2001, due to severe pain on the shoulder, he was admitted in the same hospital and bone in the left shoulder was removed and thereafter, he lost his mobility in the left hand. He further deposed that his salary was Rs.20,912/- at the time of accident. Ex.P4 is the salary certificate. P.W.3 Dr.Ravichandran has given evidence stating that the claimant has sustained 38% permanent disability and also produced Ex.B10 disability certificate and Ex.B11 X-ray. Accepting the evidence of PW1 and based on Ex.P2, the tribunal fixed the age of the claimant as 55 years.

<https://hcservices.courts.gov.in/hcservices/> 10. In view of the evidence from Ex.P2 Medical Report and Ex.B6 the case sheet that the claimant was taking treatment from 22.12.2000 to 05.03.2001. Considering the above fact, the Tribunal has awarded a

sum of Rs.76,692/- towards loss of income during treatment period. Exs.P8 and P9 Medical Bills show that the claimant has spent Rs.1,60,360/- towards medical expenses. So, the Tribunal has awarded a sum of Rs.1,60,360/- towards medical expenses, Rs.500/- towards Transportation, Rs.5,000/- towards extra nourishment, Rs.20,000/- towards pain and suffering and Rs.38,000/- towards permanent disability.

11.It is seen that the Tribunal has awarded Rs.38,000/- towards permanent disability, by applying Rs.1,000/- per percentage and as per the decisions of this court, the claimant is entitled for Rs.3,000/- for per Percentage. By applying Rs.3,000/- for one percentage of disability, Rs.1,14,000/- (38 x Rs.3,000/-) awarded towards permanent disability. The award under the head of conventional damages, in our opinion, is very low and they have to be enhanced. The Tribunal has not awarded any compensation towards attendant charges, so under the head a sum of Rs.10,000/- is awarded. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability (38%) (38% x3,000)	38,000	1,14,000	enhanced
2.	For pain and sufferings	20,000	50,000	enhanced
3.	For extra nourishment	5,000	10,000	enhanced
4.	For attendant charges		10,000	awarded
5.	For loss of income during treatment period	76,692	76,692	confirmed
6.	For Medical expenses	1,60,360	1,60,360	confirmed
7.	For Transportation	500	5,000	enhanced
	Total	Rs.3,00,552	Rs.4,26,052/ - (Rounded off to Rs.4,26,000/-)	By enhancing a sum of Rs.1,25,500/-



12. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.3,00,552/- to a sum of Rs.4,26,000/- along with interest @ 7.5% per annum from the date of petition till date of realization with proportionate costs. The 2nd respondent shall deposit the modified award amount within interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited. On such deposit, the claimant is entitled to withdraw the entire amount. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
cum - IV Additional Subordinate Judge,
Madurai.

+1cc to M/S.K.Samidurai, Advocate SR.No. 81839
+1cc to M/S.S.Natarajan, Advocate SR.No. 81897

C.M.A (MD) No. 928 of 2011
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AM
JM/SV MMS/SAR 1/15.12.2017/4P/4C