



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.970 of 2011

M.Khaja Mydeen

... Appellant/Petitioner

Vs.

1. D.Mahendran Raja

2. The National Insurance Co. Ltd.,
Rep. through its Divisional Manager,
3, North Veli Street, Madurai-1.

... Respondents/Respondents

(1st respondent set an ex-parte)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree (Award) dated 10.01.2011 made in M.C.O.P.No.1518 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Madurai.

For Appellant	: Mr.C.Godwin
For R-1	: Ex-parte
For R-2	: Mrs.S.Shivashankari

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Claimant against the award, dated 10.01.2011 passed in M.C.O.P.No.1518 of 2008 by the Motor Accident Claims Tribunal (Additional District and Sessions Court, Fast Track Court No.III, Madurai).

2. It is a case of injury sustained by the injured/claimant in an accident, which took place on 10.06.2008 at about 6.45 a.m., at Northern side of the Muthu Bridge, Madurai.

3. It is the case of the claimant before the Tribunal that when he was riding his motorcycle bearing Registration No.TN-59-AC-3391 with due care and caution from north to south in Muthu bridge, a lorry bearing Registration No.TN-72-B-5954, which came from the opposite direction in a rash and negligent manner from south to north, dashed against the motorcycle and as a result of which, the injured sustained grievous injuries.



4. The claimant filed an application in M.C.O.P.No.1518 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court, Fast Track Court No.III, Madurai), seeking compensation.

WEB COPY

5. Before the Tribunal, the injured/claimant examined four witnesses as P.Ws.1 to 4 and marked eleven documents as Ex.P1 to P11. The second respondent/Insurance Company did not let in any oral or documentary evidences. Ex.X1 and Ex.X2 were also marked before the Tribunal as Court documents.

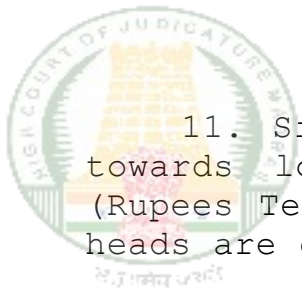
6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the lorry and therefore, directed the second respondent to pay a sum of Rs.3,85,000/-, as compensation.

7. Against which, the appellant/claimant filed this present appeal seeking enhancement of compensation.

8.The learned counsel for the appellant/claimant would submit that the victim sustained injuries and he was treated by P.W.4-Doctor. The Doctor had issued the Disability Certificate under Ex.P11 assessing the total permanent disability at 70% and assessing the partial permanent disability at 22%. But, for that, the Tribunal awarded a sum of Rs.2,70,000/- (15 X 12 X 1500) by taking only a sum of Rs.1500/- as loss of income per month and the compensation awarded under the other heads are also lower side and therefore, the appellant has filed this appeal seeking enhancement of compensation. He further submitted that even though the appellant has restricted the claim in this appeal, only to Rs.3,00,000/-, now the appellant is prepared to pay the Court fee for the amount to be awarded by this Court and therefore, prays for enhancement of compensation.

9.Considering the above submission, taking into consideration the age and avocation of the injured, this Court fixes a sum of Rs.6,000/- (Rupees Six Thousand Only) as monthly loss of income and awarded a compensation of Rs.9,07,200/- (Rupees Nine Lakhs Seven Thousand and Two Hundred Only) (6000 X 12 X 18 X 70/100) towards future loss of income.

10. Further, the sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards transportation and other incidental charges, is on the lower side and therefore, the same is enhanced to a sum of **Rs.20,000/-** (Rupees Twenty Thousand



11. Similarly, the Tribunal has not awarded any compensation towards loss of amenities. Therefore, a sum of **Rs.10,000/-** (Rupees Ten Thousand only) is awarded by this Court and the other heads are confirmed.

12. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing 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 future loss of income	2,70,000	9,07,200	enhanced
2.	For transportation and other incidental charges	10,000	20,000	enhanced
3.	For medical expenses	75,000	75,000	confirmed
4.	For pain and sufferings	30,000	30,000	confirmed
	Total	Rs.3,85,000	Rs.10,32,200	By enhancing a sum of Rs.6,47,200/-

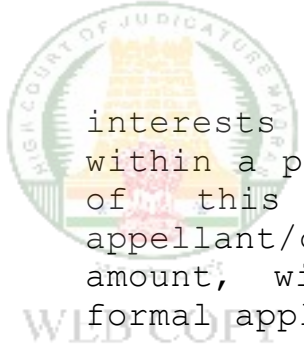
13. The rate of interest awarded by the Tribunal at 9% per annum is reduced to 7.5% per annum.

14. In the result,

(i) This Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from Rs.3,85,000- (Rupees Three Lakhs and Eighty Five Thousand only) to a sum of **Rs.10,32,200/-** (Rupees Ten Lakhs Thirty Two Thousand and Two Hundred 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 claimant is directed to pay the additional Court Fee, within a period of **two weeks** from the date of receipt of a copy of this judgment; and

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount of **Rs.10,32,200/-** (Rupees Ten Lakhs Thirty Two Thousand and Two Hundred only) with accrued



interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Motor Accident Claims Tribunal
Madurai.

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

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.70559

+1cc to Mr.C.Godwin, Advocate Sr.No.70477

PM

VB/KP/SAR2/12/10/2017/4P/5C

C.M.A(MD)No.970 of 2011
04.08.2017