



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) .No.507 of 2014

K.Balakrishnamani

... Appellant/Claimant

Vs.

1. S.Anand Boby

2. The Branch Manager,  
National Insurance Company Limited,  
Anguvilas Building North Car Street,  
Nagercoil, Agasteeswaram Taluk,  
Kanyakumari District.

3. Annez

4.Siva

5. The Branch Manager,  
Bajaj Alliance General Insurance Company Limited,  
No.24, Balamore Road,  
Opp. to Rajesh Theatre,  
Vadasery, Nagercoil,  
Kanyakumari District.

... Respondents/Respondents

**PRAYER:-** Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP No.10 of 2011 on the file of Motor Accident Claims Tribunal, Special Court for Forest Offence Cases, Nagercoil, Kanyakumari District, dated 14.08.2012.

For Appellant : Ms.A.Elis Chitra Devi

For Respondents : No appearance for R.1, 3 & 4  
Mr.J.S.Murali - for R.2 & R5

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### JUDGMENT

Assailing over the judgment and decree passed by the Motor Accident Claims Tribunal, Special Court for Forest Offence Cases, Nagercoil, Kanyakumari District, in MCOP No.10 of 2011 dated 14.08.2012, the present civil miscellaneous appeal has been filed.



2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of injury and the claimant/injured, being dissatisfied with the compensation of Rs.1,07,300/- awarded by the tribunal, is before this Court, seeking enhancement. According to the appellant/claimant, he was working as a mason at the time of accident and in consequence to the accident in question, he sustained grievous injuries and fracture on his jaw and due to that surgery was also conducted. However, the tribunal has awarded only a meagre sum and therefore, he prays for enhancement.

4. The mode of accident as well as the liability are not disputed. It is seen from the records that the appellant/claimant, out of the accident, sustained grievous injuries; fractures; and had also underwent surgery. Perusal of records shows that the doctors who had given treatment to the appellant have been examined as P.W.2 and P.W.3 and they have narrated the disability suffered by the appellant. However, the percentage of disability was not assessed by the Doctor, who treated the claimant. It is also seen from the records that the learned Judge, without assessing the disability, has ordered compensation on various heads.

5. A reading of paragraph No.15 of the judgment clearly shows that the injuries sustained by the appellant is very serious in nature. Both the doctors elaborately discussed about the fracture sustained by the appellant and the disability suffered by the appellant. The tribunal has discussed it in Paragraph No.15, very elaborately, which clearly states that the appellant had undergone surgery for the fracture on his nose. Due to that now he is not able to open his mouth, laugh and even to chew food. On a perusal of the records, it appears that the disability of the petitioner is on the higher side and this Court is of the view that the learned Judge ought to have directed the Doctors to assess the disability, so as to order some compensation towards disability. Considering the serious nature of the injuries sustained by the appellant, this Court is of the view that it would be appropriate to fix the disability as 20%. By considering the present day cost of living, this Court is of the view that it would be appropriate to give Rs.3,000/- per percentage of disability, as per the judgment rendered by this Court in the decision reported in **2013 (2) TN MAC 583**. Therefore, the compensation of Rs.60,000/- is awarded (20% X Rs.3,000/-) towards disability.

6. Other than disability head, the compensation awarded by the tribunal is reasonable and therefore, the same stands



7. As far as pay and recovery is concerned, the tribunal, after analyzing the entire facts and circumstances, has rightly arrived at a decision - pay and recovery, i.e., directing the second respondent to deposit the award amount and recover the same from the first respondent, which does not warrant any interference at the hands of this Court and therefore, the same stands confirmed.

8. In result, this civil miscellaneous appeal is partly allowed and

- the compensation awarded by the tribunal is enhanced and the total award amount is fixed at Rs.1,67,300/- [Rs.1,07,300/- awarded by the tribunal + Rs.60,000/- enhanced by this Court towards disability].
- The second respondent is directed to deposit the sum of Rs.1,67,300/- [Rupees One Lakh Sixty Seven Thousand and Three Hundred only] towards compensation with interest @ 7.5%, less the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.
- On such deposit, the appellant/claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.
- There shall be no order as to costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Special Judge,  
Special Court for Forest Offence Cases,  
Motor Accident Claims Tribunal,  
Nagercoil, Kanyakumari District.

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

+2cc to Mr.J.S.Murali, Advocate Sr.No.61602

RM

VB/RSK/SAR4/05.06.2018/3P/6C