



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.03.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

**Civil Miscellaneous Appeal (MD) No.148 of 2018
and CMP NO.2156 of 2018**

Iffco - Tokio General Insurance Company Limited
Branch Manager, No.82 3rd floor,
Kaluvetil Teenu center, Court Road,
Nagercoil, Kanyakumari District ... Respondent No.2/ Appellant

-vs-

1.A.Ratheshkumar ... Petitioner/Respondent No.1

2.K.V.Niju ... Respondent NO.1/ Respondent No.2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 07.10.2017 passed in MCOP No.74/2015 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil.

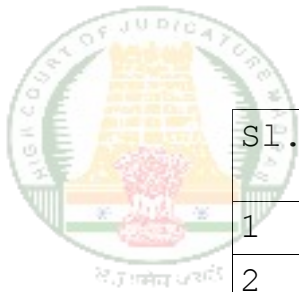
For Appellant : Mr.V.Sakthivel
For respondent-1 : Mr.N.Sudhagar Nagaraj

JUDGMENT

(Order of the Court was made by S.Vimala,J.,)

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil in MCOP No.74/2015, dated 07.10.2017.

2.The claimant/1st respondent Mr.Ratheshkumar, aged about 31 years, a Mason by profession earning a sum of Rs.700/- per day, filed a claim petition for compensation, claiming a sum of Rs.71,87,000/-, but restricted his claim to Rs.45 lakhs. The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.18,04,000/- with interest at the rate of 7.5 % from the date of petition till the date of deposit and the break up details are as follows:



Sl.No.	Heads	Compensation (Rs.)
1	Pain and suffering	1,50,000.00
2	Loss of earning during the period of treatment	20,000.00
3	Loss of amenities and marriage prospects	1,50,000.00
4	Attendant charges	50,000.00
5	Extra nourishment	50,000.00
6	Loss of life span	1,00,000.00
7	Mental agony	1,00,000.00
8	Medical expenses supported by medical bills	2,00,000.00
9	Transport expenses	20,000.00
10	Permanent disability at 50%	8,64,000.00
11	For fixing Artificial limb	1,00,000.00
		18,04,000.00

3. The Tribunal has considered the fact that there is amputation up to ankle level, though the disability is certified as 75%, the Tribunal, fixing the percentage of functional disability as 50%, taking the monthly income of the claimant as Rs.9,000/- and by adopting 16 multiplier, has quantified the loss of earning at Rs.17,28,000/- and awarded a sum of Rs.8,64,000/- for permanent disability sustained by the claimant.

4. The learned counsel for the appellant would submit that the amount of Rs.1 lakh towards loss of life span is unsustainable and there is no scope at all for reduction in the life span, especially, when the fracture and loss of leg is up to ankle level only. This contention is acceptable and the award of Rs.1 lakh is unwarranted under the head of loss of life span.

5. However, the learned counsel for the appellant would submit that even in the year 2014, in the case of **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd., 2014 (1) TNMAC 459(SC)**, the Hon'ble Supreme Court has fixed the monthly income of a person only at Rs.6,500/- and prayed that the loss of income awarded is very low and hence, the same may be transformed to the head of loss of income.

6. In view of the above, since the incident was of the year 2015 and the monthly income fixed at Rs.6,000/- is extremely low and the amount of Rs.1,00,000/- awarded towards reduction in the life span should be transformed to the head of loss of income. The



amount of Rs.1,00,000/- awarded under the head of loss of life span is transformed to the head of loss of earning.

7. The civil miscellaneous appeal is dismissed, confirming the order of the Tribunal, though for different reasons. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To:

The Chief Judicial Magistrate ,
Motor Accidents Claims Tribunal
Nagercoil.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copiers)

+ 1 cc TO Mr.V.Sakthivel , Advocate in SR No. 54688
+ 1 cc TO Mr.N.Sudhagar Nagaraj , Advocate in SR No.54201

RR
AE/KKR/SAR1/22.05.2018/3P/6C

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