



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.07.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.87 of 2015

WEB COPY

Kumar

... Appellant/Petitioner

vs.

1)Muruga Kannan

2)TATA AIG General Insurance Company Ltd.,
Branch Manager,
Peninsula Corporate Park,
Piramal Tower, 9th Floor,
Ganpatrao Kadam Marg,
Lowere Parel,
Mumbai-400 013.

... Respondents/Respondents

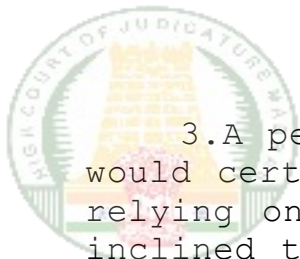
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2014 made in MCOP.No.518 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli.

For Appellant	: Mr.T.Selvakumaran
For R1	: No appearance
For R2	: Mr.S.Srinivasa Raghavan

JUDGMENT

Not satisfied with the quantum of compensation of Rs.19,03,080/- awarded by the Tribunal, the claimant has filed this appeal challenging the judgment and decree dated 28.03.2014 made in MCOP.No.518 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli.

2.Learned counsel for the appellant would submit that due to the accident, the appellant/claimant sustained crush injury which resulted in amputation of left leg above knee. He further submitted that prior to the accident, the appellant was working as a Contractor in Public Works Department and earned Rs.30,000/- per month, but in the absence of proof, the Tribunal fixed the income at Rs.7,500/- per month. According to the counsel for the appellant, the Tribunal ought to have fixed the monthly income of the appellant at Rs.8,500/- as per the Supreme Court judgment in **N.Suresh vs. Yusuf Shariff** reported in **2012 (2) TN MAC 617(SC)**. Further, the Tribunal ought to have awarded Rs.2,00,000/- towards permanent disability as per the judgment of this Court in **Divisional Manager, Oriental Insurance Co.Ltd., vs. Arockiaraj** reported in **2017 (1) TN MAC 669(DB)**. Except the above, the award under other heads are not disputed.



3.A person working as a Contractor in Public Works Department would certainly earn more than Rs.10,000/- per month. Therefore, relying on the judgment in N.Suresh's case(supra), this Court is inclined to fix the monthly income of the appellant at Rs.8,500/- per month. After computing annual income, applying 14 multiplier, the loss of earning capacity due to 88% disability works out to Rs.12,56,640/-(8500x12x14x88/100). Apart from the above, a sum of Rs.2,00,000/- is awarded towards permanent disability as per the judgment of this Court in Divisional Manager, Oriental Insurance Co.Ltd., vs. Arockiaraj reported in 2017 (1) TN MAC 669(DB). Except the above, the award under other heads are confirmed. Accordingly, the total compensation is modified and apportioned as hereunder:-

Loss of earning capacity	=	Rs.12,56,640/-
Permanent disability	=	Rs. 2,00,000/-
Transportation	=	Rs. 10,000/-
Nutrition	=	Rs. 15,000/-
Attendant charges	=	Rs. 5,000/-
Pain and suffering	=	Rs. 50,000/-
Loss of amenities	=	Rs. 1,00,000/-
Medical expenses	=	Rs. 3,61,550/-
Fixation of artificial leg	=	Rs. 2,07,730/-

Total	=	Rs.22,05,920/-
(Less) Amount awarded by the Tribunal	=	Rs.19,03,080/-

Enhanced compensation	=	Rs. 3,02,840/-

4.Altogether, the appellant is entitled to Rs.22,05,920/- with 9% interest per annum from the date of petition till the date of deposit. The 2nd respondent insurance company is directed to deposit the said amount with interest, 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, the appellant/claimant is permitted to withdraw the same without filing any formal petition before the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)



To

The Special Sub Judge,
Special Sub Court,
Motor Accident Claims Tribunal,
Tirunelveli.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.72443
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.72205

BALA

VB/KAK/SAR1/23.10.2018/3P/4C

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