

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 24.04.2018
Pronounced on : 21.06.2018

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CORAM**THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD)No.1095 of 2013**

1.T.Vijaykanth
2.E.Thanga Nadar ... Appellants/Petitioners
[Since the 1st appellant is in Semiconscious
and mentally disordered state, he is rep. by
his father and natural guardian, the second appellant herein]

Vs.

1.S.Viju
2.M.S.Shaji
3.National Insurance Company Ltd.,
rep. by its Branch Manager,
North Car Street, Nagercoil - 629 001,
Kanyakumari District. ... Respondents /Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award dated 07.06.2011 in M.C.O.P.No.8 of 2006, on the file of Motor Accidents Claim Tribunal (II Additional Sub Court), Nagercoil.

For Appellant : Mr.T.Lajapathi Roy

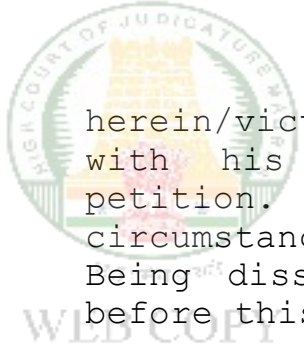
For Respondents : No appearance for R.1
Mr.B.Brijesh Kishore for R.2
Mr.D.Sivaraman for R.3

JUDGMENT

Assailing over the judgment passed by the Motor Accident Claims Tribunal, (II Additional Sub Court), Nagercoil, in M.C.O.P.No.8 of 2006, dated 07.06.2011, 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. The accident took place on 25.07.2004 and in consequence to the same, the first appellant



herein/victim sustained grievous injuries, who, in turn, along with his father-cum-natural guardian have filed the claim petition. The tribunal, after appreciating the facts and stated circumstances, has awarded a sum of Rs.7,52,000/- as compensation. Being dissatisfied with the same, the appellants/claimants are before this Court, seeking enhancement.

4. The manner of accident as well as the percentage of disability are not disputed. It is seen that the vehicle involved in the accident is a share-auto, which dashed against the first appellant/victim. Due to the accident, the first appellant/victim sustained grievous injuries and had undertaken treatment as inpatient for more than 100 days. It is seen that the victim has sustained severe head injuries and has undergone several surgeries. In consequence to the accident, the first appellant/victim was in semiconscious stage, even after treatment and also suffered from temporary memory loss. Therefore, he was represented by his father before the tribunal. Even before this Court, the victim was represented by his father/the second appellant herein. The Doctor, who treated the first appellant/victim, has assessed his disability as 90% and the same was proved before the tribunal.

5. The tribunal, after analyzing all the factors, has awarded a decent sum towards pain and sufferings, however, this Court feels that the same is a minimal one, comparing to the affliction faced by the appellants. The reason is that survival, although important, is no longer a sufficient outcome to measure the success rate. The inability of the survivors to return to work or regain previous levels of employment activities; study skills; re-engaging business activities has to be viewed. These issues not only rest with the victims alone, but, also with the surroundings; relatives; aids of the victims, on whom the victims have to depend even for attending their natural calls.

6. Major trauma is any injury that has the potential to cause prolonged disability or death. In the present case, it may be appropriate to say that the affliction faced by the second appellant/father of the victim as well as the surroundings is more than that of the first appellant/victim, who is bed ridden. Compensation towards pain and sufferings is not only meant for the victim, but also for the surroundings. The torment faced by them would be more. Because, the victim/first appellant is bed ridden with head injuries, who suffered temporary memory loss and was in semiconscious stage, ie., nothing but a vegetable. Pain is closely related to suffering, which is more than just bodily pain. So, this Court is of the considered view that in a case of this nature, the pain and sufferings faced by the victim including his surroundings cannot be expressed in words and therefore, this Court is inclined to enhance the compensation towards pain and sufferings and the same is accordingly enhanced from Rs.1,00,000/- to Rs.3,00,000/-.

7. Moreover, on a perusal of records, it is seen that the victim was aged about 19 years at the time of accident and employed himself as a loadman. The Hon'ble Supreme Court, in the decision reported in **2014 (1) TN MAC 459 (SC)** in the case of **Syed Sidiq etc., v. Divisional Manager, United India Insurance Company Ltd.**, has held that the reasonable monthly income of a labour in an unorganized sector doing his own business would be Rs.6,500/-. In the present case on hand, the accident took place in the year 2004 and the deceased was aged about 19 years at the time of accident and therefore, this Court is of the view that it would be appropriate to take the notional income of the deceased as Rs.4,500/- per month.

8. Therefore, the loss towards income is fixed as Rs.8,74,800/- (Rs.4,500/- * 12 * 18 * 90/100) and temporary loss of income for six months would be Rs.27,000/- (Rs.4,500/- * 6).

9. Other than these three heads, the compensation awarded by the tribunal is fair and reasonable and therefore, the same does not warrant any interference.

10. The compensation awarded by the tribunal in the aforementioned three heads, now stands modified as follows:

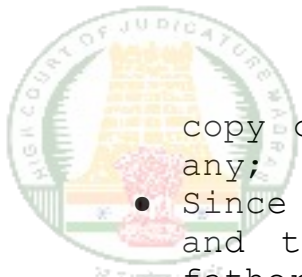
Head	Compensation awarded by the tribunal	Compensation fixed by this Court	Difference in Compensation / Amount enhanced by this Court
Loss of income	Rs.4,86,000/-	Rs.8,74,800/-	Rs.3,88,800/-
Temporary loss of income	Rs.15,000/-	Rs.27,000/-	Rs.12,000/-
Pain and sufferings	Rs.1,00,000/-	Rs.3,00,000/-	Rs.2,00,000/-

In result, the compensation amount is fixed at Rs.13,52,800/- [Rs.7,52,000/- + Rs.6,00,800/- (enhanced by this Court)].

11. It is seen that though a valid insurance policy was in force at the time of accident, the tribunal has ordered pay and recovery, since the driver of the offending vehicle did not possess a valid driving licence and the vehicle was plied without a valid permit, i.e., plied beyond the permitted area. Since policy conditions have been violated, the tribunal has rightly ordered pay and recovery, which, in my considered opinion, does not warrant any interference at the hands of this Court.

12. In result, this civil miscellaneous appeal stands partly allowed with the following directions:-

• The third respondent / Insurance Company is directed to deposit the entire award amount with interest @ 7.5% and costs within a period of eight weeks from the date of receipt of a



copy of this judgment, less the amount already deposited, if any;

- Since the victim / first appellant is in semiconscious stage and throughout the proceedings, he was represented by his father / second appellant herein, the Tribunal is directed to deposit the entire amount, to be deposited by the third respondent / Insurance Company, in anyone of the Nationalized Banks in a fixed deposit initially for a period of three years and the same shall be auto-renewed once in three years;
- The second appellant is permitted to withdraw the interest once in three months directly from the Bank and shall utilize the same for the welfare of the first appellant;
- If need arises and/or if any change in circumstances, the second appellant is at liberty to approach the Tribunal by way of appropriate application;
- The third respondent / Insurance Company is at liberty to recover the amount from the second respondent / owner of the vehicle as per the decision of the Hon'ble Supreme Court in **Nanjappa Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**; and
- The appellants / claimants are directed to pay the necessary additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this judgment.
- There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Nagercoil.

Copy to:
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.T.Lajapathi Roy , Advocate in SR No. 69290
+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 63708

gk
AE/SKN RSK/SAR2/06.07.2018/4P/6C