



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.1297 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
Sekar Chambers,
1st Floor,
732, K.P.S.A.Arumugam Road,
Sivakasi.

.. Appellant/3rd respondent

Vs.

1.Kanagaraj

.. 1st respondent / Petitioner

2.R.Murugan

3.Ganesan

.. Respondents 2 & 3 /
Respondents 1 & 2

PRAYER:- Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 12.09.2012, made in M.C.O.P.No.21 of 2011 by the Motor Accident Claims Tribunal / Subordinate Judge, Sivakasi.

For appellant : Mr.C.Ramachandran

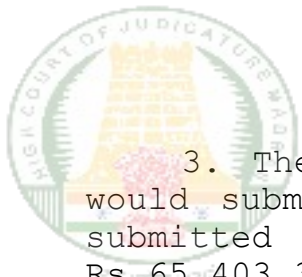
For 1st respondent : Mr.D.Sakkaravarthi

For respondents 2 & 3 : No appearance

JUDGMENT

Heard the learned counsel appearing for both sides and perused the records carefully.

2. It is a case of injury. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.1,86,903/- as total compensation to the injured. The appellant / Insurance Company has filed this appeal questioning the quantum .



3. The learned counsel for the appellant / Insurance Company would submit that based on the medical bills viz., Ex.A4 and A5 submitted by the injured, the Tribunal has awarded a sum of Rs.65,403.30 towards medical expenses, but PW3 - Dr.M.Chidambaram has clearly stated in his evidence that the claimant has spent only a sum of Rs.15,000/- and the balance amount has been paid by the Star Health Insurance Company Limited and therefore, the Tribunal ought to have awarded only a sum of Rs.15,000/- towards medical expenses. Thus, he prayed to reduce the award amount.

4. The learned counsel appearing for the 1st respondent / claimant would submit that instead of awarding Rs.3,000/- per percentage of disability as per the decision of the Hon'ble Supreme Court in **Vimal Kanwar Vs. Kishore Dan**, reported in **2013(1) TN MAC 641 (SC)**, the Tribunal has awarded only Rs.2,000/- per percentage of disability. Thus, he prayed to enhance the award amount.

5. As rightly stated by the learned counsel for the appellant / Insurance Company, it is seen that PW3 - Dr.M.Chidambaram has admitted in his cross examination that the injured has paid only Rs.15,000/-, out of Rs.65,403.30 and the balance amount has been paid by the Star Health Insurance Company. As the claimant has not paid the total medical expenses, he is entitled to get only Rs.15,000/-, which amount is stated to have been paid by him. Therefore, a sum of Rs.65,403.30 awarded by the Tribunal towards the head of medical expenses is hereby reduced to Rs.15,000/-.

6. As far as the contention of the claimant is concerned, as per the decision of the Hon'ble Supreme Court in **Vimal Kanwar Vs. Kishore Dan**, reported in **2013(1) TN MAC 641 (SC)**, the Tribunal ought to have awarded Rs.3,000/- per percentage of disability. Though the doctor has assessed 44% of disability, considering the fact that the claimant has returned to his avocation after the accident, the Tribunal has taken 38% as the permanent disability of the injured. This Court does not find any reason to interfere with the same. As per the above judgment, if Rs.3,000/- is awarded per percentage of disability, the disability amount comes to Rs.1,14,000/-. Thus, the amount awarded by the Tribunal under the head of disability is enhanced from Rs.74,000/- to 1,14,000/-. In other respects, the award passed by the Tribunal is confirmed. Thus, the total award amount comes to Rs.1,76,500/-.

7. In view of the above, the award is reduced from Rs.1,86,903.30 to Rs.1,76,500/-. The appellant / Insurance Company is directed to deposit the entire award amount ie., Rs.1,76,500/-, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit being made, the claimant is permitted to withdraw the award amount with accrued interest and costs without filing any formal petition before the Tribunal.



8. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS-II)

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sivakasi.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.C.RAMACHANDRAN, ADVOCATE IN SR No. 71203
+ 1 CC TO Mr.D.SAKKARAVARTHI, ADVOCATE IN SR No. 71077

GCG

TE/JM/RSK/SAR-2 : 18/09/2018 : 3P/6C

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