BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.406 of 2013

Senthilmurugan ... Appellant/Petitioner

Vs.

1. Venkatraman

2. Branch Manager,
   National Insurance Company Limited,
   Door No.3, North Veli Street,
   Madurai – 1.

3. Valavanthan

4. Branch Manager,
   IFFCO – TOKKIO General Insurance Company,
   No.82, Pritham Plaza 1st Floor,
   Chandrakanthi Nagar,
   Ponmeni, Bye-Pass Road,
   Madurai – 10. ... Respondents/Respondents

[Respondents 3 & 4 are given up]

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP No.116 of 2007 dated 23.12.2008 on the file of the Motor Accident Claims Tribunal cum Sub Court, Aruppukottai.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.A.Abdulkadhar for R.1 for M/s.Eddy & Emboss Law Firm
Mr.N.Murugesan for R.2

JUDGMENT

Assailing over the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Aruppukottai, in M.C.O.P.No.116 of 2007 dated 23.12.2008, 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.1,13,725/- awarded by the tribunal, is before this Court, seeking enhancement.

4. It is seen from the records that the appellant/claimant, in consequence to the accident in question which is not disputed, sustained multiple fractures; injuries all over the body and has also undergone surgery. From the Doctor's evidence, it is seen that disability was assessed as 44.6% (approximately 45%) and from the award passed by the tribunal, it is seen that the tribunal has awarded Rs.45,000/- towards disability, which, in my considered opinion, is very meagre. The accident occurred in the year 2007 and considering the age of the appellant/claimant and the cost of living, the tribunal ought to have ordered atleast Rs.2,000/- per percentage of disability and therefore, this Court is inclined to enhance the award amount under that head.

5. It is also seen from the records that the tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings. From the Doctor's evidence, it is seen that plates were placed to connect the Humerus and Condylar Bones; Radial Bones got displaced fractures and the appellant, aged about 33 years at the time of accident, has underwent surgery and therefore, this Court is of the view that the pain and sufferings of the appellant is very high and he has to live with this pain and sufferings for the rest of his life. Therefore, the compensation towards pain and sufferings deserves interference.

6. Since 44.6% (~45%) disability has been assessed, the compensation towards disability is enhanced from Rs.45,000/- to Rs.90,000/-, i.e., a sum of Rs.45,000/- is enhanced towards disability. The compensation awarded towards pain and sufferings is enhanced from Rs.10,000/- to Rs.40,000/-. Other than these two heads, the compensation awarded under all the other heads are quite reasonable and therefore, they are confirmed.

7. In result, the compensation awarded by the tribunal is enhanced from Rs.1,13,725/- and the same is fixed at Rs.1,88,725/- (Rs.45,000/- enhanced towards disability + Rs.30,000/- enhanced towards pain and sufferings). The rate of interest at 7.5% awarded by the tribunal is sustained.

8. Perusal of records show that the driver of the offending vehicle, namely, Dhachinamoorthy, was not in possession of a valid driving licence at the time of accident. By way of an additional affidavit, a copy of the driving licence of the said Dhachinamoorthy was produced before this Court, wherein, it is seen that the driving licence expired in the year 2004. The accident occurred in the year 2007 and therefore, it is clear that the driver of the offending vehicle was not in possession of a valid driving licence at the time of accident.

9. Since there was a breach of policy conditions, the tribunal is right in directing the owner of the vehicle/the first respondent

herein to pay the compensation. However, on a careful perusal of documents, it is seen that the policy is in force. So, in the circumstances of the case, I am of the considered opinion that ends of justice would be met if pay and recovery is ordered, by directing the 2nd respondent/insurance company to pay compensation to the appellant/claimant at the first instance and thereafter, to recover the same from the owner of the vehicle/first respondent, by following the judgment of this Court in the case of ***ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS*** reported in ***2004 (2) CTC 464***, wherein, the mode of recovery has clearly been dealt in paragraph 8 of the judgment, which reads as follows:-

> *"Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no orders as to costs.*
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> *Appeal disposed of accordingly."*

10. In the light of the authoritative pronouncement of the judgment cited supra, pay and recovery is ordered in the case on hand. The second respondent / Insurance Company is directed to deposit the enhanced award amount of Rs.1,88,725/- [Rupees One Lakh Eighty Eight Thousand Seven Hundred and Twenty Five only] towards compensation, with interest @ 7.5%, less the amount 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 entire amount with accrued

interests and costs, without filing any formal application before the Tribunal. The second respondent / Insurance Company is at liberty to recover the amount from the first respondent / owner of the vehicle as per the decision of the Hon'ble Supreme Court in ***Nanjappan Vs. Oriental Insurance Company Limited and Others,*** reported in ***2003(1)L.W. 77.***

11. This civil miscellaneous appeal stands allowed in the above terms. There shall be no order as to costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Judge, Motor Accident Claims Tribunal – cum -
Subordinate Court,
Aruppukottai.

Copy To:-

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

+ 1 CC TO Mr.C.JAWAHAR RAVINDRAN, ADVOCATE IN SR No. 61802
+ 1 CC TO M/s.EDDY & EMBBOSS LAW FIRM, IN SR No. 61770
+ 1 CC TO Mr.N.MURUGESAN, ADVOCATE IN SR No. 61937

GK
TE/SKN-RSK/SAR-1 : 05/06/2018 : 4P/7C

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