

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated 19.03.2019****CORAM :****THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM****CMA(MD)No.455 of 2013****WEB COPY**

Selvakumar

: Appellant/Petitioner

vs.

1.R.Mahalingam

2.M/s.National Insurance Co., Ltd.,

Represented through its

Branch Manager

T.V.K.Industrial Estate

Guindy, Chennai

: Respondents / Respondents

PRAYER:Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree passed in M.C.O.P.No. 74 of 2003 dated 12.11.2008 by the learned Additional District Sessions Judge (Fast Track Court No.I-Motor Accident Claims Tribunal), Madurai and prays to set aside the quantum of award concerned and enhance the award amount of Rs.42,000/- to that of Rs.1,00,000/- as in jugment pronounced by the trial Court in the above M.C.O.P.,

For Appellant : Mr.A.Theethar

For R1 : No appearance

For R2 : Mr.J.S.Murali

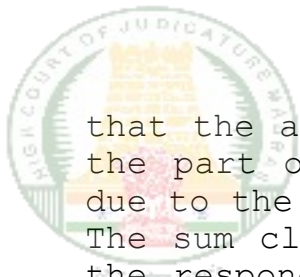
JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the fair and decreetal order dated 12.11.2008 made in M.C.O.P.No. 74 of 2003 on the file of the learned Additional District Sessions Judge (Fast Track Court No.I-Motor Accident Claims Tribunal), Madurai

2.The brief facts of the case are as follows:

On 13.11.2002 at about 21.00 hours, the appellant/claimant was walking along with his father in Muniyandi Koil Street, Meenakshipuram, from south to north. At that time, a two-wheeler bearing registration number TN-59-R-0850 came in a rash and negligent manner and dashed the appellant/claimant on his back side, due to the said impact, he fell down and sustained multiple severe injuries. Hence, he filed a claim petition in M.C.O.P.No.74 of 2003 before the Motor Accident Claims Tribunal(Additional District Judge, F.T.C.No.1), Madurai for claiming a compensation of Rs.1,00,000/- as compensation.

3.The second respondent/Insurance Company has filed a counter statement and denying the mode of accident. He contended



that the accident was not due to the rash and negligent driving on the part of the driver of the 1st respondent's vehicle, but solely due to the negligence on the part of the appellant/claimant himself. The sum claimed under various heads are also very much objected by the respondents by stating that the period of treatment and nature of treatment on the whole the claim made by the claimant as excessive and hence, sought for dismissal of the claim application.

4.The Tribunal on perusal of oral, documentary evidence and especially the document relating to verifying the disability certificate which was marked through P.W.2 as Exhibit P.4, has observed the fact that the injury sustained by the appellant/claimant is 35% disability. The Tribunal has also considered the same and awarded a sum of Rs.35,000/- towards permanent disability; Rs.5,000/- towards pain and suffering and Rs.2,000/- towards Nutrition and Transportation. The Tribunal has directed the 2nd respondent to pay a sum of Rs.42,000/- to the appellant/claimant as compensation along with interest at 7.5% per annum from the date of filing the claim petition till the date of realisation. Aggrieved against the same, the appellant/claimant before this Court.

5.The grievance of the appellant/claimant is that the Tribunal had taken a sum of Rs.35,000/- towards permanent disability is very much meagre amount and the Tribunal ought to have enhanced the same. Further, the sum awarded under the various heads are also very much on the lower side and hence, the compensation on the whole is not sufficient to the injuries caused to the appellant/claimant and also the disability sustained by him.

6.I have heard the learned counsel appearing on either side.

7.On hearing both side and on perusal of records, it is observed that the appellant/claimant sustained fracture injury, Exhibit P.4, the disability certificate was filed before the Tribunal through P.W.2, the doctor. The appellant/claimant grievance is that inspite of disability, a sum of Rs.1,000/- has been calculated per percentage is very much on the lower side, and hence, the award amount is liable to be modified. During the date of accident, the appellant/claimant was a minor. Considering the facts and circumstances of the case, this Court calculates at Rs.1,500/- per percentage of 35% disability and it calculates as follows;

35% disability (1500*35)	= Rs.52,500/-
Pain and Sufferings	= Rs. 5,000/-
Nutrition and Tansportation	= Rs. 2,000/-

Total	= Rs.59,500/-



8.Hence, the award passed by the Tribunal is modified. Regarding other heads, there is no modification and the same is confirmed.

9.In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is enhanced from Rs.42,000/- to Rs.59,500/- (Rs.52,500/- towards disability + Rs.5000/- towards pain and suffering + Rs.2000/- towards nutrition and transportation). The 2nd respondent/Insurance Company is directed to deposit a sum of Rs.59,500/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the appellant/claimant is permitted to withdraw the entire amount along with interest, without filing a formal petition before the Tribunal. No costs.

sd/
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Sessions Judge
(Fast Track Court No.I-Motor
Accident Claims Tribunal), Madurai
2. The Section Officer,
V.R.Section, (2 COPIES)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.A.THEETHAR, Advocate (SR-55226[F] dated 20/03/2019)
+1 CC to Mr.J.S.MURALI, Advocate (SR-55199[F] dated 20/03/2019)

CMA(MD) No.455 of 2013
19.03.2019

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