



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD)No.1308 of 2009

Sham Anand

... Appellant/Petitioner

Vs.

1. Issac Thambiraj

2. Branch Manager,
Ipco Tokiyo General Insurance Company Ltd.,
28, 1st & 2nd Floor,
West Usman Road,
T.Nagar,
Chennai - 17.

... Respondents/Respondents

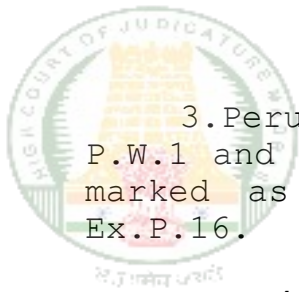
PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 24.04.2009 in M.C.O.P. No.263 of 2007, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

For Appellant	: Mr.T.Selvakumaran
For 1 st Respondent	: <i>Ex-parte</i>
For 2nd Respondent	: Mr.V.Sakthivel

JUDGMENT

Being dissatisfied with the quantum awarded by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tirunelveli, in M.C.O.P. No.263 of 2007, dated 24.04.2009, the claimant as appellant, has filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

2.The case of the claimant is that on 30.07.2007 at about 7.30 a.m., he is riding his motor cycle bearing Registration No.TN 69 X 5154 on Tirunelveli-Tiruchendur main road. At that time, a lorry bearing Registration No.TN 74 W 2153 which was owned by the first respondent and insured with the second respondent insurance company and the driver of the lorry drove it in a rash and negligent manner and hit against the motor cycle. In that impact, he sustained injuries. Even though, the case of the claimant was disputed by the second respondent/Insurance Company, the finding of the Tribunal that the accident took place only due to the rash and negligent driving of the driver of the lorry was not challenged and thus, it has become final. Hence, on this aspect, no further discussion is required in this appeal.



3.Perusal of record shows that the claimant examined himself as P.W.1 and examined Dr.Ramaguru as P.W.2. The wound certificate was marked as Ex.P.3 and the disability certificate was marked as Ex.P.16.

4.According to P.W.2 and Ex.P.16, the claimant has suffered 35% permanent disability, however, the Tribunal has taken the disability as 30% and awarded Rs.30,000/- by applying Rs.1,000/- per percentage. Likewise, Exs.P.8 to Exs.P.12 would reveal that the claimant was hospitalized in Sri Sakthi Hospital and Sri Devi Hospital and he had spent Rs.89,838.18/-paise towards medical expenses. Since the claimant restricted the medical expenses for Rs.50,000/-, the Tribunal awarded only Rs.50,000/-, though the medical bills shows that he spent Rs.89,838.18/- paise for his treatment, as stated above.

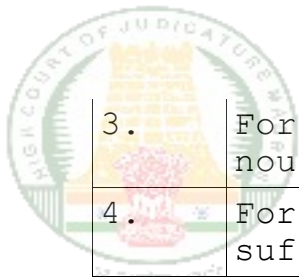
5. Mr.T.Selvakumaran, learned counsel for the appellant, contended that this Court awarded Rs.2,000/- per percentage and the claimant is entitled for entire medical expenses, even though it is restricted to Rs.50,000/-.

6.Per contra, Mr.V.Sakthivel, learned counsel for the second respondent contended that since the accident has taken place in the year 2007, the Tribunal has rightly applied Rs.1,000/- per percentage and the appellant has not made out any case to interfere with the findings of the Tribunal.

7.In the matter on hand, as rightly pointed out by the learned counsel for the appellant, this Court is awarding compensation in the case of permanent disability by applying Rs.2,000/- per percentage. Hence, the award under permanent disability is enhanced from Rs.30,000/- to Rs.60,000/-. With regard to medical expenses also, I am of the opinion that the claimant is entitled for the medical expenses as per Exs.P.8 to Ex.P.12 which comes to Rs.89,838.18/- paise, which is rounded off to Rs.90,000/-. In all other aspects, the award of the Tribunal is confirmed.

8. The award of the tribunal is modified as under:-

S.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability (30%) (30% x2,000)	30,000	60,000	enhanced
2.	For Medical expenses	50,000	90,000	enhanced



3.	For extra nourishment	3,000	3,000	confirmed
4.	For pain and sufferings	20,000	20,000	confirmed
5.	For Transportation	3,000	3,000	confirmed
	Total	Rs.1,06,000	Rs.1,76,000/-	By enhancing a sum of Rs.70,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,06,000/- to a sum of **Rs.1,76,000/-** along with interest @ 6% per annum from the date of claim petition till the date of realization with proportionate costs. The 2nd respondent shall deposit the modified award amount with interest at the rate of 6%p.a., 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. On such deposit, the claimant is entitled to withdraw the entire amount, by filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Judicial Magistrate
Motor Accidents Claims Tribunal
Tirunelveli.



2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1 CC to Mr.T.SELVA KUMARAN, Advocate (SR-1311[F] dated
20/01/2021)

C.M.A (MD) No.1308 of 2009
18.01.2021

VB (12.02.2021) 4P 5C