

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	29.03.2021
Date of Judgment	01.07.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.382 of 2013

Amsavalli : Appellant/Claimant

Vs.

1.C.K.Siva Shanmugam
2.V.Castro Kumars
3.The National Insurance Company
Tallakulam Branch through
its Divisional Manager
at 2A, North Street,
Thirumakulam, Madurai.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 03.01.2008 made in MCOP No.1928 of 2002 on the file of Motor Accident Claims Tribunal (First Additional District Judge/Fast Track Court), Madurai.

For Appellant : Mr.A.Liaket Ali

For R1 and R2 : No appearance

For 3rd Respondent : Ms.P.Malini

J U D G M E N T

Challenge made in this appeal is to the award, dated 03.01.2008 made in MCOP No.1928 of 2002 on the file of Motor Accident Claims Tribunal (First Additional District Judge/Fast Track Court), Madurai.

2.The short facts of the case is that on 24.02.2002 at about 11.00 am, the claimant was travelling in an auto rickshaw TN-58-D-6456 in the direction to Periyar Bus Stand at Madurai Mudakku Salai (I.e.) Madurai to Theni Main Road, while the claimant was nearing Vijaya Hospital, a Metador Van TN-59-C-0189, which came from opposite direction, in a rash and negligently and dashed against the Auto Rickshaw TN 58-D-6456. Due to the impact, the claimant was thrown away and severely injured and immediately, he



was taken to Government Rajaji Hospital, Madurai, for treatment. A claim petition was filed by the claimant seeking compensation of Rs.4,00,000/- for the injuries sustained by him in the alleged accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.1,25,100/- with interest @ 7.5% p.a. Being not satisfied with the award of the tribunal, the claimant as appellant is before this court.

4.Heard both sides and perused the materials available on record.

5.The first contention raised on the side of the appellant/complainant is that one Doctor determined the disability as 38% and other Doctor determined the disability as 37% , but the tribunal without any basis considered that the injured had sustained only 38% disability, which is not correct and hence, the injured had total disability at 75% and the injured is entitled to compensation for 75% disability and prays for allowing this Civil Miscellaneous Appeal.

6.But on the other hand, on the side of the 3rd respondent, it is argued that the disability cannot be determined by two Doctors for various parts and the total disability can be determined by one Doctor and hence, the tribunal correctly fixed the disability as 38% and hence, the injured is entitled to 38% partial permanent disability. In this case, PW3 is the Doctor, who determined the disability for the injured. Already, PW2 examined the injured and determined the disability as 38%. PW3 determined the disability for inner organs. Hence, the tribunal correctly rejected the disability determined by PW3 and determined the disability for inner organs. Hence, it is held that the injured had 38% partial permanent disability. Hence, the claimant is entitled to Rs.1,14,000/- (Rs.3,000/- for 1% disability) for 38% disability.

7.It is seen from the records that while awarding compensation, the tribunal has not awarded under the head of extra nourishment, transportation and attendant charges, future medical expenses. Considering the facts and circumstances of this case and also considering the injuries sustained by the claimant, this court is inclined to award some amount under the above heads. Accordingly, the award of the compensation is re-calculated as under:-



Head of compensation	Award of the tribunal (Rs.)	Award of this court (Rs.)
Disability	38,000/-	1,14,000/-
Loss of Income during treatment period	64,000/-	54,000/-
Pain and sufferings	10,000/-	25,000/-
Medical Bills (Exs.P6, P8 and P9)	13,100/-	13,100/-
Extra nourishment	--	5,000/-
Transportation	--	3,000/-
Attender charges	--	3,000/-
Future medical expenses.	--	5,000/-
Total	1,25,100/-	2,22,100/-

Accordingly, the claimant would be entitled to Rs.2,22,100/- together with interest at the rate of 7.5% p.a.

8.In fine, the Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is enhanced to Rs.2,22,100/- from Rs.1,25,100/-. The 3rd respondent Insurance Company is directed to deposit the modified amount of Rs.2,22,100/- together with interest at the rate of 7.5% p.a, from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire amount with accrued interest and costs, without filing any formal petition before the tribunal. The claimant shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (CS-III)

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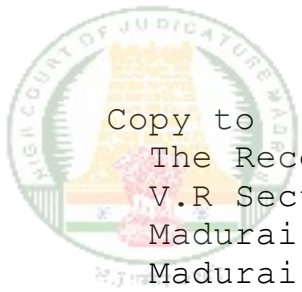
/ /2021

Sub Assistant Registrar (CS)

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To

1.The I Additional District Judge
Fast Track Court No.I,
Motor Accident Claims Tribunal
Madurai.



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V.R Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to Mr.P.Malini, Advocate (SR-20924[F] dated 01/07/2021)

C.M.A (MD) No.382 of 2013
01.07.2021

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