**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	06.01.2021
Date of Judgment	05.02.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.1104 of 2016andCMP(MD)No.9893 of 2016

The Manager,
Oriental Insurance Company Limited,
No.75, Krishnan Street,
Thiruvannamalai.

: Appellant/2nd Respondent

Vs.

1.Saratha Balaji

: R1/Petitioner

2.Hajijulla

: R2/1st Respondent

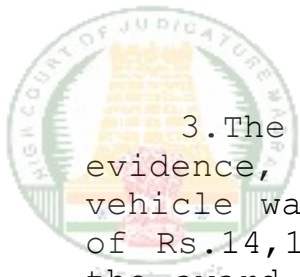
PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 25.01.2016 made in MCOP No.185 of 2012 on the file of Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Trichy.

For Appellant : Mr.K.Bhaskaran
For 1st Respondent : Mr.V.Nagenthran
For 2nd Respondent : No appearance

JUDGMENT**(Thro' VC)**

Challenge made in this Civil Miscellaneous Appeal is to the award passed by the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Trichy, in MCOP No.185 of 2012, dated 25.01.2016.

2.The short facts of the case is that on 31.03.2011, when the claimant Saratha Balaji was proceeding to her office in her two wheeler TN-22-BP-3894 on Chennai-Thambaram Highways (GST) road at Pazhavanthangal road junction, at the time, the Car TN-07-AF-6363 came in a rash and negligent manner and dashed against the two wheeler. In that process, the claimant thrown away and sustained multiple grievous injuries. The claimant sought compensation of Rs.2,00,00,000/- on the ground that the driver of the offending vehicle was responsible for the 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.14,17,420/- together with interest @ 7.5% p.a. Challenging the award of the tribunal, the Insurance Company as appellant is before this court.

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

5.In this case, the only dispute is in respect of quantum alone. The learned counsel appearing for the appellant/2nd respondent argued that in this case, the tribunal awarded Rs.1 Lakhs towards pain and suffering and Rs.4 Lakhs towards loss of amenities and Rs.1 Lakh towards mental agony and when the court awarded compensation towards pain and suffering, then the claimant is not entitled to receive compensation towards loss of amenities and mental agony and prays that the compensation awarded under the head of loss of amenities and mental agony may be set aside and prays that the Civil Miscellaneous Appeal has to be allowed. In support of his contention, the learned counsel for the appellant/2nd respondent submitted a ruling reported in **2010(2) TNMAC 307 (DB) (United India Insurance Company Limited Vs. R.Vijayakumar)**.

6.On the other hand, the learned counsel appearing for the 1st respondent/claimant submitted that even though the tribunal awarded compensation towards pain and suffering, the claimant is entitled to compensation towards loss of amenities and mental agony and prays that the Civil Miscellaneous Appeal has to be dismissed. Further, the learned counsel for the 1st respondent/claimant submitted that pain and suffering and mental agony are not one and the same and they are different to each other and hence, the tribunal has every right to award compensation towards pain and suffering and mental agony. For that, the learned counsel appearing for the 1st respondent/claimant submitted a ruling reported in **2015 ACJ 2343 (ICICIL Combard General Insurance Company Limited Vs. Prakash)**.

7.The main contention raised on the side of the appellant/2nd respondent is that already compensation was awarded as against pain and suffering and hence, the claimant is not entitled any amount towards loss of amenities and mental agony.

8.On perusal of the judgment reported in **2016(2) TN MAC 307 (DB) (United India Insurance Company Limited Vs. R.Vijayakumar)**, it is held as follows:-

"41.Since, this court had awarded a sum of

Rs.1,00,000/- towards Pain and Suffering to the First Respondent/Claimant, we are of the considered view



that the Award of Rs.1,00,000/- towards Loss of Amenity granted by the Trial Court was an incorrect one and therefore, we set aside the same.

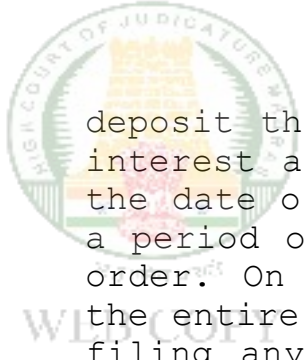
9. On perusal of the above citation reported in **2016(2) TN MAC 307(DB) (United India Insurance Company Limited Vs. R.Vijayakumar,** it is stated that when any amount towards pain and suffering was given, the claimant is not entitled to receive any compensation towards loss of amenity. On coming to the instant case on hand, the tribunal has already awarded Rs.1 Lakhs towards pain and suffering and awarded Rs.4,00,000/- towards loss of amenities. It is to be noted that the tribunal has already awarded Rs.1 Lakh towards pain and suffering. Hence, it is held that the claimant is not entitled to any amount towards loss of amenities. Accordingly, **Rs.4,00,000/-** awarded under the head of loss of amenities is set aside.

10. The next contention of the learned counsel appearing for the appellant/2nd respondent is that the claimant is not entitled to any amount towards mental agony.

11. On perusal of the decision reported in **(2014)5 MLJ 593 (ICICI Lombard General Insurance Vs. V.Prakash),** it is held that mental agony is the internal pain, a person undergoes just by the thought that he is disabled and is not a position to do something and it is different from the physical pain that a person suffers due to injury. In this case, the tribunal has rightly awarded Rs.1 Lakh towards mental agony. Accordingly, the award of the tribunal is recalculated as under:-

Partial permanent disability	2,46,000/-	2,46,000/-
	50,000/-	50,000/-
Attendant charges	30,000/-	30,000/-
Loss of income	3,85,045/-	3,85,045/-
Pain and sufferings	1,00,000/-	1,00,000/-
Extra nourishment	20,000/-	20,000/-
Transportation charges	15,000/-	15,000/-
Mental agony	1,00,000/-	1,00,000/-
Medical expenses	71,375/-	71,375/-
Loss of amenities	4,00,000/-	-
Total	14,17,420/-	10,17,420/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The Appellant Oriental Insurance Company is directed to



deposit the modified award amount of Rs.10,17,420/- together with interest at the rate of 7.5% p.a from the date of petition, till the date of realization, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such compliance, the claimant is entitled to withdraw the entire amount together with accrued interest and costs without filing any formal petition before the tribunal. Excess amount if any shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

er
To,

1.The Motor Accident Claims Tribunal/
III Additional District and Sessions Judge,
Trichy.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-3589[F] dated 05/02/2021)

C.M.A(MD) No.1104 of 2016
05.02.2021

CN(15.07.2021) 4P 5C