

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	29.01.2021
Date of Judgment	27.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI**C.M.A(MD)No.175 of 2015andMP(MD)No.1 of 2015

WEB COPY

HDFC-ERGO General Insurance Co. Limited,
Rep. by its Divisional Manager,
559/528, 2nd Floor,
Anna Salai, Tenampet,
Chennai.

: Appellant/2nd Respondent

Vs.

1.V.Ganesh

: 1st Respondent/Petitioner

2.S.Balasubramaniam

: 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award of the tribunal passed in MCOP No.237 of 2010 by the Motor Accident Claims Tribunal (IV Additional Subordinate Judge), Madurai, dated 10.06.2014.

For Appellant

: Mr.G.Maruthiah

For 1st Respondent

: Mr.R.Saravanan

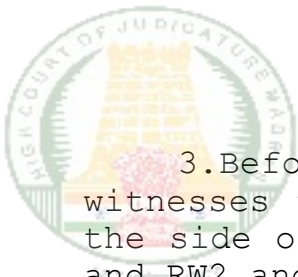
For 2nd Respondent

: No appearance

J U D G M E N T

Aggrieved by the award of the tribunal, made in MCOP No.237 of 2010, dated 10.06.2014 on the file of the Motor Accident Claims Tribunal (IV Additional Sub Judge), Madurai, the Insurance Company has preferred this appeal.

2.The brief facts of the case are that on 18.07.2009 at about 7.30 hours, while the claimant M.Ganeshan @ Ganeshkumar along with V.Ganesh the claimant in MCOP No.261 of 2010 were travelling in a two wheeler TN-58-S-3511 from Jaihindpuram to Kuttralam, a Mahendra Majestic Cup Van TN-34-E-4138 came in a rash and negligent manner from south to north direction and hit against the two wheeler. In that process, both the rider and pillion rider of the motor cycle sustained multiple grievous injuries and they were taken to Government Rajaji Hospital, Madurai, where they took treatment as inpatient from 18.07.2009 to 20.07.2009. Due to the injuries sustained in the accident, the claimant herein had sustained permanent disability. In this regard, the Sub Inspector of Police attached to Periyayur Police Station, has registered a case in Crime No.195 of 2009 under sections 279 and 337 IPC. The claimant has filed a claim petition claiming compensation of Rs.6,00,000/-.



3. Before the tribunal, on the side of the claimants, 8 witnesses were examined as PW1 to PW8 and marked 33 documents. On the side of the Insurance Company, 2 witnesses were examined as RW1 and RW2 and 7 documents were marked.

4. In the counter filed by the appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5. The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Mahendra Van caused the accident and awarded compensation of Rs.2,28,040/- to the claimant herein. Challenging the award, the Insurance Company is before this court.

6. This court heard the rival submissions made on either side and perused the materials available on record.

7. Even though several grounds raised in the grounds of appeal, it is mainly contended by the learned counsel appearing for the Appellant Insurance Company that the disability assessed by the Doctor is baseless and in respect of other heads, they are excessive and un-sustainable in law and hence, the quantum awarded by the tribunal has to be reduced.

8. On the other hand, the learned counsel appearing for the 1st respondent/claimant submitted that the award of the tribunal under the head of partial permanent disability is on the lower side and in respect of other heads, some enhancement has to be given to some extent.

9. The evidence of PW1 and Ex.P6 (Medical Bill) amply prove that the claimant had spent Rs.81,920/- towards medical expenses. Based on the evidence of PW6/Dr.A.Chinnadurai and perusal of the Case Sheet (Ex.P10), the tribunal has found that the claimant has suffered 49.56% disability and awarded Rs.2,000/- per percentage of disability, thereby awarded Rs. 99,120/- under the head.

10. It is to be noted here that in this case, the Doctor has assessed the disability of the claimant and based on the evidence, the tribunal has determined the disability of the claimant as 49.56%. As per the decision reported in **2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G.Ramesh)**, for 1% of disability, the claimant is entitled to Rs.3,000/-. Hence, it is held that the claimant is entitled Rs.1,48,680/- for 49.56% disability at the rate of 3,000/- for 1% of disability.

11. In the instant case on hand, it is not in dispute that the Doctor/PW6 deposed that the claimant had sustained 49.56% permanent disability and he has also issued a certificate to that effect. It is to be noted here that already the tribunal has awarded

Rs.9,18,000/- under the head of loss of income for 49.56% permanent disability sustained by the claimant in the accident. Hence, this court is of the considered view that **Rs.13,500/-** awarded under head of partial permanent disability is without any basis and it is to be set aside. In all other aspects, the award of the tribunal is confirmed. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	For partial loss of income	13,500/-	Nil
2.	Transportation charges	1,500/-	1,500/-
3.	Extra Nourishment	7,000/-	7,000/-
4.	Medical Expenses	81,920/-	81,920/-
5.	Pain and Sufferings	25,000/-	25,000/-
6.	Partial permanent disability	99,120/-	1,48,680/-
	Total	2,28,040/-	2,64,100/-
	Rounded off		2,64,000/-

12.In the result, the appeal is **partly allowed** and the award of Rs.2,28,040/- is enhanced to **Rs.2,64,000/-**. The interest at the rate of 7.5% per annum awarded by the tribunal is maintained. The appellant Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the claimant is permitted to withdraw the entire amount, less the amount already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

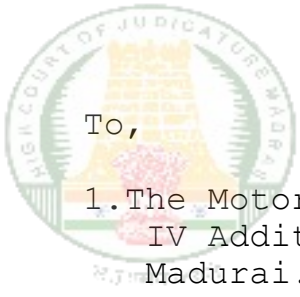
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Sub Assistant Registrar(CS)

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 /



To,

1.The Motor Accident Claims Tribunal/
IV Additional Subordinate Judge,
Madurai.

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

+1 CC to M/s.R.SARAVANAN, Advocate (SR-17847[F] dated 28/04/2021)

C.M.A (MD) No.175 of 2015
27.04.2021

KB(28.05.2021) 4P 5C