



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A(MD)No.1134 of 2021

P.Periyasamy

... Appellant/Petitioner

Vs.

1.B.Shanmugam

2.The Branch Manager,
M/s.National Insurance Co.Ltd.,
No.33, Promenade Road,
KRT Building,
Trichy.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in M.C.O.P.No.2661 of 2013 by the Motor Accident Claims Tribunal/Special Subordinate Judge, Trichy, dated 02.02.2016.

For Appellant :Mr.P.Pethu Rajesh

For R1 :No Appearance

For R2 :Ms.P.Malini

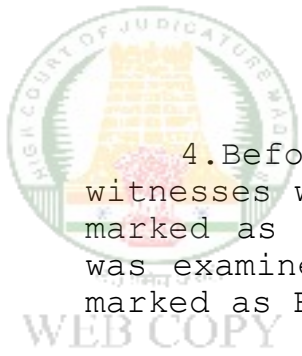
JUDGMENT

The appellant filed this appeal to enhance the compensation awarded in M.C.O.P.No.2661 of 2013 by the Motor Accident Claims Tribunal/Special Subordinate Judge, Trichy, dated 02.02.2016.

2. The case of the claimant, in nutshell, is as follows:

On 24.03.2011, at about 9.00 p.m., while the petitioner and his daughter were riding their bicycle respectively and proceeding to their home, when they were passing Vaithiyanathapuram and were proceeding on the road to village from south to north one behind another, went left and the petitioner was proceeding ahead of his daughter. At that time, a Mini bus bearing Registration No.TN-28-Y-7566 belonging to the first respondent insured with the second respondent came in the same direction, driven by its driver in a rash and negligent manner, dashed the petitioner's bicycle in behind. Due to the sudden impact, the petitioner was thrown away and sustained multiple injuries all over the body and sustained grievous injury over his head and face.

3.The claimant filed M.C.O.P.No.2661 of 2013 before the Motor Accident Claims Tribunal/Special Subordinate Judge, Trichy, claiming compensation of a sum of Rs.4,00,000/-.



4.Before the Tribunal, on the side of the claimant four witnesses were examined as P.W.1 and P.W.2 and seven documents were marked as Exs.P.1 to P.7. On the side of the respondents, no one was examined and no document was marked and one Court document was marked as Ex.C1.

5.The Motor Accident Claims Tribunal/Special Subordinate Judge, Trichy, after perusing the materials on record, awarded a sum of Rs.2,28,500/- together with interest at the rate of 7.5% to the appellant as compensation. Seeking enhancement of the award of compensation, the appellant/claimant has filed this appeal.

6.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

7.A perusal of records would show that at the time of accident, the claimant was aged about 60 years and was working as a agricultural coolie, the Tribunal has fixed the monthly income as Rs.4,500/-. Dr.Mathivanan, who was examined as PW.2, has assessed the partial permanent disability as 39% and also the issued wound certificate, which was marked as Ex.P5. However, the Tribunal reduced the same to 25% without any reason and awarded Rs.1,21,500/- towards future loss of income. Since the claimant has sustained grievous injuries, the disability is taken up as 39%, as assessed by the Doctor and since the Tribunal failed to apply the appropriate multiplier for the loss of income, the loss of income is arrived at Rs.54,000/- x 9 x 39/100 = Rs.1,89,540/-. All the other heads awarded by the Tribunal are hereby confirmed. Accordingly, the claimant is entitled for compensation as follows:

Sl. No.	Compensation heads	Details of amount
1.	Loss of income	Rs. 1,89,540/-
2.	Transportation	Rs. 10,000/-
3.	Extra Nourishment	Rs. 10,000/-
4.	Pain and Sufferings	Rs. 50,000/-
5.	Attendant Charge	Rs. 10,000/-
	Total	Rs. 2,69,540/-

Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,28,500/- to Rs.2,69,540/-, which would carry interest at the rate of 7.5% per annum. As per order dated 17.11.2021 in C.M.P(MD) No.6107 of 2021 in C.M.A(MD)SR.No.32882 of 2021, this Court exempted the interest amount for delay period, the petitioner is not entitled to claim interest for the delay period.



8.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed.

(ii)The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,28,500/- to Rs.2,69,540/-.

(iii) The second respondent/National Insurance Company Ltd., is directed to deposit the compensation amount i.e., Rs.2,69,540/- less the amount already deposited together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (exempting interest for the delay period) to the credit of MCOP.No.2661 of 2013 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Trichy, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimant is entitled to withdraw the same as per the order passed by the Tribunal after following due process of law. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Trichy.

2. The Branch Manager,
M/s.National Insurance Co.Ltd.,
No.33, Promenade Road,
KRT Building, Trichy.



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

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-4314[F] dated 04/02/2022)
C.M.A (MD)No.1134 of 2021
04.02.2022

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