



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**C.M.A(MD)NO.906 OF 2021
and
C.M.P(MD)No.8508 of 2021**

The Branch Manager,
The New India Assurance Company Limited,
Door No.1449, Tenkasi Road,
Rajapalayam Town,
Virudhunagar District. :Appellant/Second Respondent

.vs.

1.M.Ganesan : Ist Respondent/Petitioner

2.P.K.Murugesaraja :2nd Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.62 of 2019, dated 1.4.2021, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.

For Appellant :Mr.J.S.Murali
For Respondent-1 :Mr.P.Samuel Gunasingh
for Mr.R.Niresh Kumar

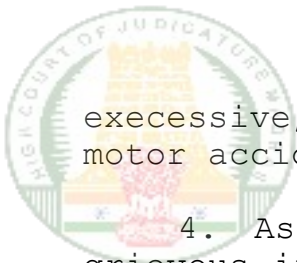
JUDGMENT

[Judgment of the Court was made by **R.SUBRAMANIAN, J.**]

This Civil Miscellaneous Appeal is directed against the judgment and decree made in M.C.O.P.No.62 of 2019, dated 1.4.2021, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Insurance Company is on appeal terming the quantum awarded by the Tribunal Rs.50,48,626.00/- towards compensation, as



excessive, for the injuries caused to the claimant/Ganesan in a motor accident that had occurred on 21.10.2015 at 7.40 p.m.

4. As a result of the accident, the claimant had suffered grievous injuries and has been rendered para plegic. Therefore, the claimant sought for compensation for 100% permanent functional disability. The Tribunal, on the evidence available, concluded that the accident had occurred due to the negligence of the driver of the offending vehicle bearing Registration No.TN 67 AV 4699. Considering the fact that the claimant was working as a Driver in a Omni bus namely a commercial vehicle, fixed his monthly income at Rs.15,000/-p.m. Adding 25% towards future prospects and by applying multiplier '13', fixed the total pecuniary loss at Rs.29,25,000/-. The Tribunal further awarded a sum of Rs12,48,000/- towards attendant charges, fixing the monthly charges at Rs.8,000/- p.m. A sum of Rs.5 lakhs is awarded for future medical expenses. The Tribunal has awarded compensation for the conventional damages as follows:

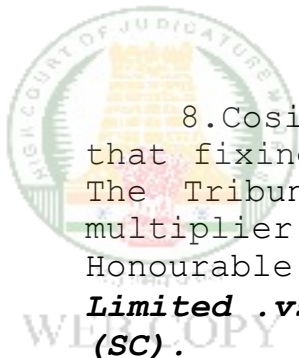
1.for pain and suffering	- Rs.1,50,000/-
2.for extra nourishment	- Rs.25,000/-
3.for transportation	- Rs.25,000/-
4.for Medical expenses as per bills	- Rs.1,75,626.00/-
5.for loss of amenities	- Rs.50,000.00/-

In all, the Tribunal has awarded a sum of Rs.50,48,626/- as compensation.

5.Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company would vehemently contend that the tribunal had erred in fixing the monthly income at Rs.15,000/-. He would also rely upon the decision of the Honourble Apex Court in the case of **Chandra @ Chanda @ Chandraram and another .vs. Mukesh Kumar Yadav and others reported in 2021(2)TN MAC 498(SC)**, wherein, the Honourable Supreme Court had taken a sum of Rs.8,000/- as monthly income for a driver of Light Motor Vehicle.

6.Contending contra, Mr.Samuel Gunasingh, learned counsel appearing for the first respondent would submit that the claimant was a driver of a mini bus, a commercial vehicle and he was drawing Rs.18,000/- p.m. as salary. Therefore fixing of Rs.15,000/-p.m as monthly income is not just and reasonable.

7.Mr.J.S.Murali, learned counsel for the appellant would also point out that the tribunal has awarded Rs.12,48,000/- towards furture attendant charges which is on higher side. The award of Rs.5 lakhs towards future medical expenses is also termed as excessive.



8.Considering the avocation of the claimant, we do not think that fixing of Rs.15,000/- p.m. as notional income is unreasonable. The Tribunal has deducted 25% for future prospects and applied multiplier '13' which are in tune with the pronouncement of the Honourable Apex Court in the case of **National Insurance Company Limited .vs. Pranay Sethy and others reported in 2017 (2) TN MAC 609 (SC)**.

9.Therefore, we do not find any reason to interfere with the quantum position awarded on the future earnings. We also do not see that the award of Rs.1,50,000/- towards pain and suffering Rs.50,000/- towards loss of amenities, Rs.25,000/- towards extra nourishment, Rs.25,000/- towards transportation and Rs.1,75,626.00/- towards medical expenses as per bills and not termed to be excessive and the same is based on documents.

10.As regards Rs.12,48,000.00/-towards attendant charges, the Tribunal has taken the monthly attendant charges at Rs.8,000/- which we think that it is on higher side. We fixed the same at Rs.4000/- p.m. Thus calculated the attendant charges will be Rs.6,24,000/-(Rs.4000 x 13 x 12). As regards the future medical expenses also, Rs.5 lakhs awarded is on higher side. The medical expenses incurred by the claimant during the period of treatment is Rs.1,75,626/- However, considering the cost of medical services which are increasing day-by-day, Rs.3 lakhs would be reasonable for future medical expenses. Therefore, the award of the Tribunal is modified and the total compensation is fixed at Rs.42,24,626/-.

11.It is seen that pursuant to the interim order, the Insurance Company has deposited a sum of Rs.30 lakhs to the credit of claim petition. The appellant/Insurance Company is directed to deposit the balance award amount with accrued interest and costs within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount, so deposited, by filing necessary application before the Tribunal.

12.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Vsn

<https://hcservices.ecourts.gov.in/hcservices/>



TO
The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Virudhunagar District at Srivilliputhur.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai - 2 Copies

+1 CC to M/s.J.S.MURALI, Advocate (SR-4679[F] dated 08/02/2022)

JUDGMENT MADE IN
C.M.A(MD)NO.906 OF 2021
and
C.M.P(MD)No.8508 of 2021
07.02.2022

svs (CO)
GC(24.02.2022) 4P 5C