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C.M.A(MD)Nos.368 and 369 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.11.2022

Pronounced on : 28.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)Nos.368 & 369 of 2017

C.M.A(MD)No.368 of 2017:

Tamilarasan

...Appellant/ Petitioner

Vs

1.Ramaraj

2.National Insurance Company Limited,
Through its Branch Manager,
No.135/1, Rose Building,
Main Road,
Kovilpatti.

... Respondents/ Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.562 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) Tirunelveli, dated 31.01.2014.

For Appellant : Mr.T.Selvakumaran

For Respondents : Mr.A.Ilango for R.2

No Appearance for R.1



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C.M.A(MD)No.369 of 2017:

Madasamy

...Appellant/ Petitioner

Vs

1.Ramaraj

2.National Insurance Company Limited,
Through its Branch Manager,
No.135/1, Rose Building,
Main Road,
Kovilpatti.

... Respondents/ Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.563 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) Tirunelveli, dated 31.01.2014.

For Appellant : Mr.T.Selvakumaran

For Respondents : Mr.A.Ilango for R.2

No Appearance for R.1

COMMON JUDGMENT

C.M.A(MD)No.368 of 2017 is filed against the order in M.C.O.P.No. 562 of 2013, on the file of the Motor Accidents Claims Tribunal cum Special Subordinate Judge, Tirunelveli. C.M.A(MD)No.369 of 2017 is filed against the order in M.C.O.P No.563 of 2013 on the file of the Motor Accidents



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Claims Tribunal cum Special Subordinate Judge, Tirunelveli. In both the appeals, the appellants herein are the claimants, respondents are the respondents in the claim petition.

2.Brief substance of the claim petitions in M.C.O.P.Nos.562 and 563 of 2013 is as follows:

On 14.05.2013, when one of the petitioner Madasamy was travelling as a pillion rider in a two wheeler, bearing registration number TN 76 W 3215, driven by the another petitioner, one Tamilarasan along the Keelanilithanallur-Sankarankovil road, keeping the left side of the road in a slow and cautious manner, a lorry bearing registration number TN 60. 6336, came from the opposite direction in a rash and negligent manner along the wrong side of the road, dashed against the motorcycle. The petitioner and the rider of the vehicle sustained injuries. The petitioner in M.C.O.P.No.562 of 2013, claimed a sum of Rs.7 Lakhs as compensation and the petitioner in M.C.O.P.No.563 of 2013, claimed a sum of Rs.7 Lakhs as compensation.

3.Brief substance of the counter filed by the second respondent in both the petitions as follows:



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The rider of the two wheeler was responsible for the accident. He drove the vehicle in a zig zag manner neglecting the road rules. He drove the vehicle in a rash and negligent manner and dashed against the lorry. Both the claimants are not disabled. They completely recovered from the injuries and they are doing their work as before. The petition is to be dismissed.

4.Both the petitioners sustained injury in the same accident and both the cases are taken up for joint trial and a common order was pronounced by the Tribunal. In the common trial, four witnesses were examined and fifteen documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal has awarded a sum of Rs.3,37,390/- as compensation for the petitioner in M.C.O.P.No.562 of 2013. The Tribunal has awarded a sum of Rs.2,32,000/- as compensation for the petitioner in M.C.O.P.No.563 of 2013. Against the awards, both the claimants have filed this appeal for enhancement of compensation.

5.Brief substance of the grounds of appeal in C.M.A(MD)No.368 of 2017 (M.C.O.P.No.562 of 2013) is as follows:



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On the side of the appellant, it is stated that the Tribunal had awarded Rs.3000/- per percentage of disability and the same has to be enhanced to Rs.4000/- per percentage of disability. The Tribunal ought to have awarded Rs.1,00,000/- towards pain and sufferings, Rs.25,000/- towards attendant charges. The Tribunal failed to award loss of income for the period of treatment, future medical expenses and loss of expectations of life and compensation for the above heads has to be awarded.

6.Brief substance of the appeal in C.M.A(MD)No.369 of 2017 (M.C.O.P.No.563 of 2013) is as follows:

The Tribunal ought to have fixed the compensation for the disability as Rs.4000/- per percentage of disability. The Tribunal ought to have granted Rs.1,00,000/- towards pain and sufferings, Rs.25,000/- towards attendant charges, Rs.67,500/- towards temporary loss of income for the period of treatment. Compensation towards future medical expenses and loss of expectations of life, are to be granted.

7.On the side of the appellant in C.M.A(MD)No.368 of 2017, it is stated that P.W.3 has deposed that the claimant was disabled. He has further deposed that the left was completely crushed and the big tow was removed



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and there is a fracture in the left foot. He assessed the disability as 43%. The disability certificate was marked as Ex.P10. X-ray was marked as Ex.P11. Considering the condition of the left leg of the claimant and considering the treatments undergone by the claimant, the Tribunal has fixed the disability as 43%.

8.On the side of the appellant, a judgment of this Court reported in **2013 2 TN MAC 583** in the case of **National Insurance Co. Ltd., Vs G.Ramesh,** is cited, wherein this Court has awarded only Rs.3000/- per percentage of disability. Hence, it is decided that the appellant is entitled to a compensation for the disability at Rs.3000/- per percentage of disability. Hence, it is decided that the claimant is entitled to a sum of Rs.1,29,000/- (3000 x 43) towards disability.

9.On the side of the appellant, it is stated that the Tribunal fixed the monthly income as Rs.4500/- and for a period of 9 months, the Tribunal has awarded a sum of Rs.40,500/- towards temporary loss of income. On the side of the appellant it is stated that the appellant was earning Rs.7,500/- and the amount towards temporary loss of income to be enhanced to Rs. 67,500/- (7500 x 9) by fixing the income as Rs.7500/- per month. For the period of



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treatment and for the period of rehabilitation, the petitioner is entitled to Rs. 90,000/- towards temporary loss of income.

10.The Tribunal has awarded Rs.5,000/- towards extra nourishment, Rs.5000/- towards attendant charges, Rs.5000/- towards transport expenses, Rs.82,290/- towards medical expenses, Rs.25,000/- towards pain and sufferings and Rs.40,000/- towards loss of amenities, which are all reasonable. The award is modified as follows:

For permanent disability	- Rs.1,29,000/-
For temporary loss of income	- Rs. 90,000/-
Extra nourishment	- Rs. 5,000/-
Attendant charges	- Rs. 5,000/-
Transport expenses	- Rs. 5,000/-
Medical expenses	- Rs. 82,890/-
For pain and sufferings	- Rs. 25,000/-
Loss of amenities	- Rs. 40,000/-

Total	- Rs. 3,81,890/-.

Hence, it is decided that the appellant in C.M.A(MD)No.368 of 2017, is entitled for a sum of Rs.3,81,890/- as compensation.



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11. In C.M.A(MD)No.369 of 2017, on the side of the appellant, it is stated that the doctor has assessed the disability at 51%. But the Tribunal without any basis, has fixed the disability as 45%. It is further stated that Rs. 4,000/- per percentage of disability to be awarded as compensation.

12.The Tribunal has fixed the disability at 45% and for the same, the Tribunal has awarded Rs.1,35,000/- as compensation. The Doctor has certified that the disability is 51%. The disability certificate was marked as Ex.P12. X-ray was marked s Ex.P13. Hence, it is decided that for 51% of disability, the claimant herein is entitled to a sum of Rs.1,53,000/- (51 x 3000) as compensation.

13.On the side of the appellant, it is stated that the Tribunal has fixed the income only as Rs.4500/- per month and granted temporary loss of come for a period of six months. The income is fixed as Rs.7,500/- per month and for the period of treatment and for the period of rehabilitation, Rs.67,500/- (7500 x 9) is awarded as temporary loss of income.



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14.The Tribunal has granted Rs.5000/- towards transport expenses, Rs.10,000/- towards extra nourishment, Rs.5000/- towards attendant charges, Rs.25,000/- towards pain and sufferings, Rs.25,000/- towards loss of amenities which are all reasonable.

15.Hence, the award is modified as under:

For disability	- Rs.1,53,000/-
Loss of Income	- Rs. 67,500/-
Transport expenses	- Rs. 5,000/-
Extra nourishment	- Rs. 10,000/-
Attendant charges	- Rs. 5,000/-
Pain and sufferings	- Rs. 25,000/-
loss of amenities	- Rs. 25,000/-

Total	- Rs.2,90,500/-

16.Accordingly, C.M.A(MD)No.368 of 2017 is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,37,390 to Rs.3,81,890/- (Rupees Three Lakhs Eighty One Thousand Eight Hundred and Ninety only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent / insurance company is directed to deposit the entire compensation of Rs.3,81,890/- (if not already



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deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of MCOP No.562 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to deposit additional court fee for the enhanced amount; The appellant is not entitled to any interest for the default period.

(iv) On such deposit being made by the second respondent/ insurance company, the appellant herein/ claimant is permitted to withdraw the entire award amount of 3,81,890/- (Rupees Three Lakhs Eighty Seven Thousand Eight Hundred and Ninety only) with proportionate interest.

17. Accordingly, C.M.A(MD)No.369 of 2017 is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,32,000/- to Rs.2,90,500/- (Rupees Two Lakhs Ninety Thousand Five Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent / insurance company is directed to deposit the entire compensation of Rs.2,90,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate



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costs to the credit of MCOP No.563 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to deposit additional court fee for the enhanced amount; The appellant is not entitled to any interest for the default period.

(iv) On such deposit being made by the second respondent/ insurance company, the appellant herein/ claimant is permitted to withdraw the entire award amount of Rs.2,90,500/- (Rupees Two Lakhs Ninety Thousand Five Hundred only) with proportionate interest.

28.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal, (Special Sub Judge), Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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