



**C.M.A(MD)No.495 of 2024**

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

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**Dated : 13.06.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

**C.M.A(MD)No.495 of 2024**

**Mahalingam**

**... Appellant / Petitioner**

**Vs.**

**1.Venkatesan**

**2.The New India Assurance Company Ltd.,  
Through its Branch Manager,  
PPK Complex,  
1st Floor, South Main Street,  
Pudukkottai - 622 001.**

**... Respondents / Respondents**

**PRAYER :-**

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to allow this appeal, enhance the award amount in M.C.O.P.No. 766 of 2017 on the file of the Motor Accident Claims Tribunal Authority (Special Sub Judge), Tirunelveli, dated 17.08.2023.

**For Appellant : Mr.T.Selvakumaran**

**For R1 : Ex-parte**

**For R2 : Mr.A.Ilango**



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## **JUDGMENT**

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This Civil Miscellaneous Appeal is filed to allow this appeal, enhance the award amount in M.C.O.P.No.766 of 2017 on the file of the Motor Accident Claims Tribunal Authority (Special Sub Judge), Tirunelveli, dated 17.08.2023.

2. The case of the petitioner is that on 03.06.2017, he was travelling in a Maruti Alto Car bearing Registration No.TN 72 BB 5134 from Tirunelveli to Coimbatore. When the car was reaching near Thanakankulam at about 2 p.m., a car bearing Registration No.TN 55AL4014 was driven by its driver in a rash and negligent manner and dashed against the Maruti Alto by coming in a wrong direction.

3. The petitioner and other inmates in the car sustained injuries. They were taken to the Lakshmana Hospital, Madurai and took treatment from 03.06.2017 to 08.06.2017. Thereafter he was taken to Meenakshi Mission Hospital, Madurai, and admitted as inpatient from 08.06.2017 to 29.06.2017. There he underwent surgery. Claiming compensation amount of Rs.25 Lakhs, the claim petition was filed by the claimant.



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4. It was resisted by the Insurance Company of the first respondent stating that due to the rash and negligent driving on the part of the driver of the car in which the claimant was travelling bearing registration No.TN 72 BB 5134, the occurrence took place. The owner of the vehicle in which the petitioner was travelling is a necessary party. The car driver was not having proper driving licence.

5. Before the Tribunal, on the side of the claimant, two witnesses were examined and nineteen documents were marked. On the side of the appellant, no witness was examined and no document was marked. The disability certificate was marked as Ex.C1., and the medical records were marked as Ex.X1 to Ex.X4.

5. At the conclusion of the enquiry, regarding negligence, the Tribunal fixed the responsibility upon the insured vehicle driver. Regarding the compensation, on the basis of the Medical Board disability certificate, it assessed the disability at 43% and awarded compensation as follows:



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| Sl. No. | Heads                        | Calculation                                              |
|---------|------------------------------|----------------------------------------------------------|
| 1       | Loss of future Earning power | Rs. 6,70,800/-                                           |
| 2       | Medical Expenses             | Rs. 7,55,601/-                                           |
| 3       | Loss of Convenience          | Rs. 75,000/-                                             |
| 4       | Pain and Sufferings          | Rs. 75,000/-                                             |
| 5       | Transport Expenses           | Rs. 20,000/-                                             |
| 6       | Attendant Charges            | Rs. 50,000/-                                             |
| 7       | Extra Nourishment            | Rs. 20,000/-                                             |
|         | Total Compensation Awarded   | Rs.16,66,401/-<br><br>(Rounded off to)<br>Rs.16,66,400/- |

6. The claimant has filed this Civil Miscellaneous Appeal, challenging the quantum. There is no counter appeal by the insurance company. Regarding the negligence portion, no discussion is required. Regarding the liability also, no discussion is required, since there is no dispute before this Court.

7. Learned counsel for the appellant would submit that the petitioner suffered 43% of the functional disability. It ought to have been taken as 100% and compensation ought to have been arrived accordingly.



8. The short point arises for consideration is whether the disability suffered by the claimant ought to have been taken as total functional disability. As noted by the Tribunal, the following injuries are noted.

- "1.Minimal left pneumothorax,*
- 2.Fracture right side 1,2,3,4,5,6,7 ribs,*
- 3.Fracture left side 3,4,5,6,7th ribs,*
- 4.Fracture over the left leg thigh,*
- 5.Fracture over the left hand shoulder,*
- 6.Abrasion over the forehead,*
- 7.Cut injury over the right leg knee."*

9. Regarding the avocation, the contention of the appellant is that he was running a tea shop and was earning a sum of Rs.30,000/- per month. But no document was produced by him. As noted above, the claimant suffered multiple fractures. The medical Board was of the opinion that because of the fracture on the left humerus fracture left and supra condylor femur fracture left, it assessed the same at 43%. A multiple fracture is also noted in the medical records submitted by the Meenakshi Mission Hospital. He underwent surgery twice. There was mal-union of left thigh bone. On the basis of the above said medical records, the Tribunal found that the claimant is not in a position to walk, sit and stand for long time as before. Noting the multiple



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fractures sustained and mal-union of the bone, the Tribunal thought it fit to adopt multiplier method. The age of the claimant was taken as 50 years and multiplier 13 was adopted. Since there was no proper documentary evidence to prove his monthly income, it assessed the same at Rs.8,000/- and 25% of future prospectus was added to that. Finally, loss of income was estimated at Rs.6,70,800/-. Since the appellant was not able to prove his avocation or the business, as the case may be, the contention on the part of the appellant is that the disability ought to have been taken as 100% as functional disability cannot be accepted. Because of the inconvenience caused to him in continuing the work as before, multiplier method was adopted by the Tribunal. Income was also taken reasonably. I find absolutely no reason to differ from the assessment made by the Tribunal.

10. In view of the above discussions, this Civil Miscellaneous Appeal is dismissed by confirming the award dated 17.08.2023 made in M.C.O.P.No. 766 of 2017 by the file of the Motor Accident Claims Tribunal Authority (Special Sub Judge), Tirunelveli. No costs.



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NCC: Yes / No  
Index: Yes / No  
Internet : Yes / No

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To

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



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**G.ILANGO VAN, J.**

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