

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No. 2508 of 2014

K.C. Venkatesan

..Appellant/Petitioner
in Trial Court

Vs.

1. M. Lingadaran
2. R. Balaji

3. United India Insurance Company
Limited, Katpadi Road,
Vellore District.

..Respondents/Respondents
in Trial Court

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 03.01.2008 passed in M.C.O.P. No. 133 of 2005 on the file of Motor Accidents Claims Tribunal (Sub-Court), Tirupattur, Vellore District.

For Appellant :: Mr.P.S.Kothandaraman

For Respondents:: Mr.R. Dhamodaran for R1

Mr.J. Michael Visuvasan for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant as against the award of the Tribunal in which negligence was fixed equally on the appellant as well as the driver of the lorry, in respect of the accident, which occurred on 17.08.2004, in which the appellant sustained fracture in the left leg resulting in 25% disability. In the claim petition, the Tribunal found that both the vehicles were responsible for the accident and awarded a sum of Rs.65,000/- out of which the appellant was entitled to a sum of Rs.32,500/-. Aggrieved over the said award, the claimant is before this Court.

2. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent and the learned counsel for the Insurance Company.

3. Though the learned counsel for the appellant would submit that there was no contributory negligence on the part of the appellant/claimant, yet, a perusal of the award would show that the Tribunal, based on documentary evidence, especially, Exs-P1, P-17 and on appreciation of oral evidence, rightly came to the conclusion that the accident was caused because of the negligence of both the vehicles. That apart, the accident was a head-on collision. In that event, it can only be construed that both the vehicles contributed to the occurrence of the accident. Therefore, contributory negligence fixed by the Tribunal cannot be set aside.

4. As far as the quantum of compensation is concerned, the claimant sustained 25% disability as he suffered a fracture in the left hand and the bones got malunited resulting in difficulty in standing for a long time, squatting and unable to do his work independently. Therefore, the Tribunal rightly determined the percentage of disability based on P.W.2, Doctor's evidence and other medical records. However, the Tribunal only awarded Rs.25,000/- for the disability sustained. Therefore, awarding Rs.2000/- per percentage of disability, a sum of Rs.50,000/- is awarded towards "Loss of income due to Disability". The sum of Rs.5000/- awarded towards "Pain and Suffering" is too low and the same is enhanced to Rs.10,000/-. But, the amount of Rs.5000/- awarded towards "Mental Agony" is deleted. The amounts of Rs.10,000/- awarded towards "Transportation Expenses"; Rs. 4000/- awarded towards "Medical Expenses"; Rs.10,000/- towards "Loss of income during treatment period and Rs.3000/- awarded towards "Attendant Charges" are confirmed. The sum of Rs.3000/- granted under the head "Extra Nourishment" is too low and the same is enhanced to Rs.13,000/-. Hence, the total compensation payable to the appellant is enhanced to Rs.11lakh and the claimant would be entitled to Rs.50,000/- together with interest @ 7.5% per annum.

5. The 3rd respondent is directed to deposit the entire amount, with interest, as per the modified award passed by this Court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw his share of the amount. The Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accident Claims Tribunal,
Subordiante Judge, Tirupattur.

Copy to: The Record Keeper, VR Section,
High Court, Madras.

+ 1 cc to Mr.P.S.Kothandaraman, Advocate Sr.1789
+ 1 cc to Mr.J. Michael Visuvasam, Advocate SR.1346

C.M.A. No. 2508 of 2014

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