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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.08.2018

JUDGMENT PRONOUNCED ON : 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.336 of 2010
&
Connected Miscellaneous Petitions

N. Vinayagam
No.182, 3rd Street
Nehru Nagar, Anna Nagar
Chennai - 600040

Appellant/Petitioner

Vs

1. K. Krishnaveni
No.19, Shanthi Nagar 2nd Street
Permambur, Chennai 600 011

2. National Insurance Co.Ltd
No.751, Anna Salai
Chennai - 600 001
R1-Exparte @ Lower court

Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.07.2009 made in MCOP No.4317 of 2004 on the file of Motor Accidents Claims Tribunal/V Court of Small Causes, Chennai.

For Appellant : Mr.M. Swamikkannu
For Respondents : Mr.D.Baskaran for R2

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order dated 28.07.2009 in MCOP No. 4317 of 2004, whereby the Tribunal has awarded compensation of Rs. 1,85,550/- to the claimant, who is the injured in an accident that occurred on 03.08.2004. Now the claimant approached this Court for enhancing the award amount.

2) The brief facts are that, on 03.08.2004 at about 20.30 hours, while the claimant was walking in old Kadpadi Road, opposite to Kannan Body Builders, a tanker lorry bearing Reg.No.



TN 23 X 1458 came in a very high speed, rash and negligent manner and dashed against the petitioner. Thereby the petitioner sustained grievous injuries. The 1st respondent is the owner and the 2nd respondent is the Insurance Company. For the alleged accident, a case has been registered in Cr.No.744 of 2004 in Vellore north Police station against the driver of the Tanker Lorry. In the Claim Tribunal, the petitioner claimed a total compensation of Rs.23,00,000/- from the respondents.

3) In the Claim Tribunal, the 1st respondent remained exparte.

4) Before the Claim Tribunal, the Appellant / injured Vinayagam examined himself as PW 1. The Doctor who issued the Disability Certificate to the PW 1 was examined as PW 2 and on the side of the petitioner, 9 documents were exhibited as Ex.P.1 to Ex.P.9. On the side of the respondent, he did not chose to examine any witnesses nor exhibited any documents.

5) After elaborate enquiry, the claim Tribunal came to the conclusion that both the 1st and the 2nd respondents are jointly and severally liable to pay the compensation. Further, it was decided that the total percentage of disability for deciding the compensation is 55%.

6) Now, when the appeal is taken up today for consideration, the learned Counsel appeared for the respondent present and did not dispute the findings of the Claim Tribunal with regard to the liability. He challenged the quantum of compensation alone.

7) As already discussed in the claim Tribunal, Rs.45,000/- alone is awarded for the 55% of the permanent partial disability. In this regard, the learned Counsel appeared for the appellant would submit that the compensation arrived by the Tribunal in respect to the Disability is very meager and prayed for enhancement.

8) Now coming to the point of disability, the Doctor, who examined on the side of the petitioner assessed the disability and he gave evidence that the injured is suffered 55% of permanent partial disability. In this regard, both the counsels appearing on either side agreed to take 50% of the disability for calculating the compensation. Since the alleged accident is happened in the year of 2004, this Court decided it would appropriate to award Rs.2000/- per percentage as compensation to the permanent partial disability. Accordingly, under the head of disability, the petitioner is entitled to Rs.1,00,000/- as a compensation. Further, the Claim Tribunal awarded Rs.10,000/- for pain and suffering. In this regard, since the claimant suffered 50% disability, it would be



appropriate to fix Rs.20,000/- under the head of pain and suffering.

9) In regard to the other heads, in the claim Tribunal Rs.3000/- was allowed under the head of Transportation to Hospital, Rs.4000/- was allowed under the head of extra nourishment. Rs.500/- was allowed towards damage of dress materials. Further in the claim Tribunal, the appellant produced medical Bills for Rs.13,434/- and for Rs.85,615/-. Moreover, Rs.24,000/- was allowed under the head of loss of income for six months. Now considering the quantum fixed by the claim tribunal under various heads is not on the higher side. Further, the Counsel appearing on either side had not disputed the quantum allowed on various heads. So the said amounts are unaltered. As discussed above, the compensation awarded by the Tribunal is enhanced to Rs.2,50,549/- as detailed below.

SL.NO	PARTICULARS	Awarded by the Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	AMOUNT (IN.RS)
1.	Towards Pain and Suffering	10,000.00	20,000.00
2.	Towards Permanent Partial Disability	45,000.00	1,00,000.00
3.	Towards loss of Income for 6 months	24,000.00	24,000.00
4.	Towards Transport to Hospital	3,000.00	3,000.00
5.	Towards Extra-nourishment	4,000.00	4,000.00
6.	Towards damage to dress materials	500.00	500.00
7.	Towards Medical Bills Rs.13434 + Rs. 85615 = Rs. 99049 rounded off to Rs. 99050/-	99,050.00	99,050.00
Total		1,85,550.00	2,50,550.00

10) Accordingly, the compensation arrived at by the Claim Tribunal is modified to the extent of Rs.2,50,550/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, if any within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.



11) In the result, the Civil Miscellaneous appeal is partly allowed. Consequently, the connected Miscellaneous petitions are closed. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrn

To:

The Motor Accident Claim Tribunal,
Court of small causes V,
Chennai.

+lcc to M.D.Baskaran, Advocate sr.no.65399
+lcc to Mr.M. Swamikkannu, Advocate sr.no.65644

Civil Miscellaneous Appeal No.336 of 2010

nr 24/01/2019