

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2495 of 2013

K.Dhanam

... Appellant /Petitioner

Vs.

1. G.Balachandran
2. M/s New India Assurance Company Limited,
No.17, Main Road, Shevapet, Salem.

... Respondents/Respondent

PRAYER This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 06.11.2009 passed in MCOP No.454 of 2006 by the II Additional Subordinate Judge/ Motor Vehicle Accidents Claims Tribunal, Salem.

For Appellant : Mr.Ma.P.Thangavel
For Respondent : Mr.N.Vijayaraghavan (for R2)

J U D G M E N T

The appellant is the claimant in MCOP No.454 of 2006 on the file of the II Additional Subordinate Judge/Motor Accident Claims Tribunal, Salem. She filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.4,00,000/- for the injuries sustained by her in a road accident that took place on 07.01.2006.

2. The case of the appellant/claimant is that on 07.01.2006, she was travelling as a passenger in a share Auto bearing Registration No.TN-27-E-7104 belonging to the first respondent and insured with the 2nd respondent, on Salem-Trichy Road and that when the share Auto was nearing LRN Bike Dealer

Office at Seelanaikanpatty, the driver of the share Auto drove the vehicle rashly and negligently, as a result of which the share Auto toppled and the claimant sustained multiple injuries all over her body. According to the claimant, the rash and negligent driving of the driver of the share Auto was the cause of accident and that since the owner of the Share Auto, the first respondent, insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to her.

3. Both the respondents contested the claim petition.

4. The learned II Additional Subordinate Judge/Motor Accident Claims Tribunal, Salem, after analysing the evidence on record, awarded a compensation of Rs.70,000/-together with interest at the rate of 7.5% per annum . Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal.

5. Mr.Ma.P.Thangavel, learned counsel appearing for the appellant contended that though the claimant had sustained fracture on her both legs and Doctor C.Thiayarajan (PW2) assessed the partial permanent disability as 50%, the Tribunal had awarded a very meagre amount of Rs.40,000/- towards partial permanent disability. His specific contention is that the claimant was an agricultural labourer earning a sum of Rs.3,000/- per month and she was aged 38 years on the date of accident. His next contention is that though the claimant had produced medical bills to the tune of Rs.1,20,066/-, the Tribunal without assigning any reason had awarded a very meagre amount of Rs.25,000/- towards medical expenses. It is his further contention that no amounts were awarded towards "Transportation", "Loss of amenities", "Transportation Charges" and "Extra Nourishment" and that a very meagre amount of Rs.5,000/- was awarded under the head "pain and sufferings". He therefore prayed for enhancement of compensation.

6. Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the 2nd respondent contended that the Tribunal after considering all the aspects of the case, had awarded a just compensation of Rs.70,000/- and the same need not be disturbed at this stage.

7. A perusal of the discharge summary (Ex.P6) shows that the claimant had sustained a fracture on her both legs and a screw was also fixed. In fact, she was admitted as an inpatient from 07.01.2006 to 31.01.2006. Doctor Thiayarajan (PW2) had assessed the partial permanent disability of the

claimant as 50%. It is to be pointed out that the claimant is an agricultural labourer and definitely the accident would have some impact on her earning capacity. However, since there is no functional disability, adopting multiplier method is not warranted. As far as the present case is concerned, awarding Rs.2000/- per percentage, in the opinion of this court, would meet the ends of justice and therefore, Rs.1,00,000/- is awarded towards " Partial Permanent disability ". On account of the accident, the claimant would not have been in a position to attend to her regular work for atleast one year. Hence, Rs. 36,000/- (3000 x 12) is awarded towards "Loss of income". Apart from this, the claimant is also entitled to the following amounts, as extracted hereunder.

Sl.No	Heads	Amounts in Rs.
1	Partial Permanent disability	1,00,000
2	Pain and suffering	25,000
3	Extra Nourishment	10,000
4	Transportation	5,000
5	Loss of amenities	10,000
6	Loss of income (3000x12)	36,000
7	Attender's charges	3,000
8	Damage to clothes	1,000
9	Medical bills	1,20,066
	Total	3,10,066

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

8. In the result,

i) The civil miscellaneous appeal is allowed. No costs.

ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.70,000/- to Rs.3,10,066/-

iii) The 2nd respondent/ Insurance Company is directed to deposit the enhanced compensation of Rs.3,10,066/-, together with interest at the rate of 7.5% per annum (less the amount already deposited by them), within a period of four weeks from the date of claim petition till the date of deposit.

(iv) On such deposit being made by the 2nd respondent/Insurance company, the appellant/claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

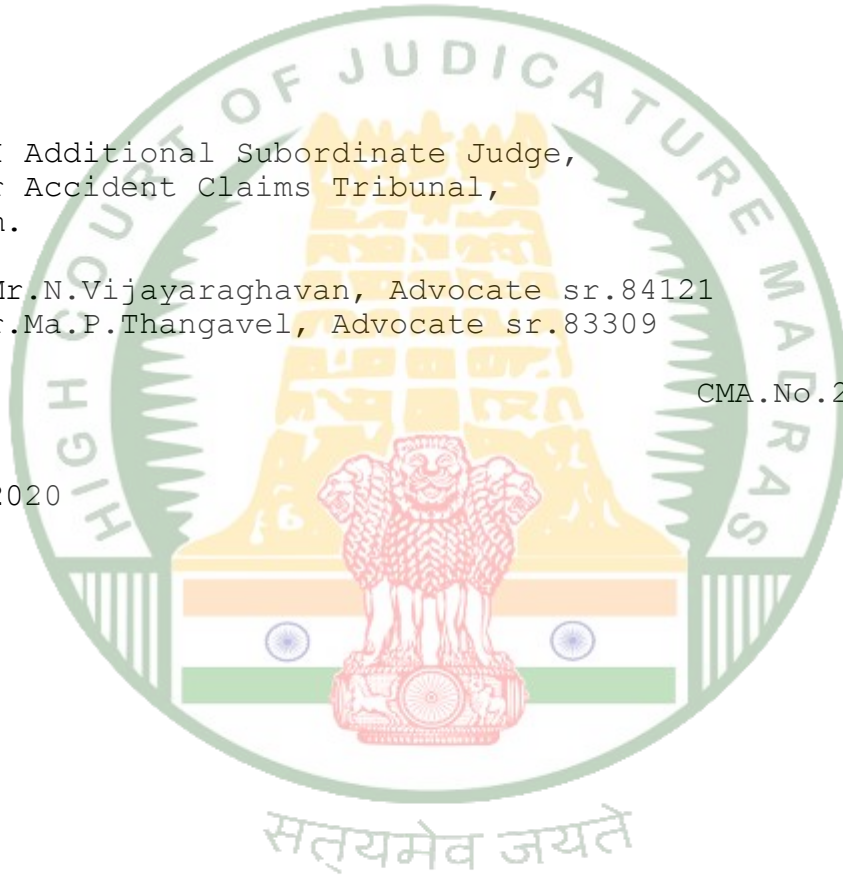
1. The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Salem.

+1cc to Mr.N.Vijayaraghavan, Advocate sr.84121

+1cc to Mr.Ma.P.Thangavel, Advocate sr.83309

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