

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3228 of 2009

A.Siva

...Appellant/Petitioner

Vs

1. V.Murugaiyan

2. National Insurance Company Ltd.,
No.751, Annasalai, Chennai-2.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.3443 of 2004 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Madras, dated 17.07.2009 and for enhancement of compensation.

For Petitioner : Mr.S.Gangaram Prasad

For Respondents : Mr.S.Vadivel
for R2
R1 - Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 17.07.2009 made in M.C.O.P.No.3443 of 2004 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Madras.

2. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal.

3. The appellant herein is the claimant in M.C.O.P.No.3443 of 2004 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Madras. He filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.06.2004.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider-cum-owner of the Water Tanker Lorry belonging to the first respondent and directed the respondents to pay a sum of Rs.1,04,000/- as compensation to the appellant/claimant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The case of the appellant is that on 26.06.2004 at about 21.00 hours, the petitioner was riding a motorcycle bearing Reg.No.TN 22 L 7753 from Medavakkam to Chittalampakkam, on Mambakkam Road (Opposite to G.R.Kalyana Mandapam). At that time, a Water Tanker Lorry bearing Reg.No.TN 57 B 9995, in a rash and negligent manner, came from opposite direction on the wrong side without following the traffic rules, hit against the claimant and due to the said accident, the appellant sustained grievous injuries and he was admitted to a Government Royapettah Hospital, Chennai. Hence, he seeks for a compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent relied on the counter filed by the 2nd respondent and stated that there is no evidence to show that he had underwent any surgery and incurred disablement and claiming an exorbitant amount of Rs.3,00,000/-, is not proper and valid. The learned counsel would further submit that the age, occupation and income of the petitioner is not admitted and hence, the petition is not maintainable, neither on facts nor on law. The accident had occurred only due to the rash and negligence of the motorcyclist. The water tanker lorry driver is not responsible for the accident. Hence, this respondent is not liable to pay compensation to the petitioner. The age, income, place and time of accident, nature of injuries, place and period of treatment are denied. The driver of the water tanker lorry was having valid and effective driving license at the time of accident. The amount of compensation claimed are highly excessive and hence, he prays for dismissal of the present appeal.

8. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

9. From the materials on record, it is seen that P.W.3/Doctor assessed that the appellant suffered 55% disability. The Tribunal accepted the disability certificate issued by P.W.3/Doctor and granted a sum of Rs.55,000/- (55 X 1,000). Considering the nature of injuries sustained by the appellant, this Court fixed 55% disability and awarded a sum of

Rs.1,65,000/- (3000 X 55) by awarding a sum of Rs.3,000/-per percentage of disability, which is proper. The Tribunal has awarded a sum of Rs.4,000/- each towards transport expenses and towards extra nourishment and the same are meager and are hereby enhanced to Rs.10,000/-, each. The Tribunal has not awarded any amount towards attendant charges. A sum of Rs.10,000/- is granted towards attendant charges. The Tribunal has awarded a sum of Rs.10,000/- each towards mental agony and towards pain and suffering. Considering the nature of injuries and disability suffered by the appellant, the same are hereby enhanced to Rs.20,000/- and Rs.30,000/- respectively. The accident occurred on 26.06.2004. The Tribunal has awarded a sum of Rs.16,000/- towards loss of income. The appellant was a Lorry Driver and was earning a sum of Rs.8,000/- per month. Considering the job of the appellant and also the day to day affairs, the appellant is entitled to a sum of Rs.24,000/- (Rs.8,000/- X 3) towards loss of income for 3 months. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	55,000/-	1,65,000/-	enhanced
2.	Pain and Suffering	10,000/-	30,000/-	enhanced
3.	Medical expenses	5,000/-	5,000/-	confirmed
4.	Transportation	4,000/-	10,000/-	enhanced
5.	Extra Nourishment	4,000/-	10,000/-	enhanced
6.	Loss of earning for 3 months	16,000/-	24,000/-	enhanced
7.	Mental Agony	10,000/-	20,000/-	enhanced
8.	Attendant charges	-	10,000/-	granted
	Total	Rs.1,04,000/-	Rs.2,74,000/-	enhanced by Rs.1,70,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,04,000/- is hereby enhanced to Rs.2,74,000/- with interest at the rate of 7.5% per annum from the date of petition till the

date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sbn

To

- 1.The Motor Accident Claims Tribunal, III Judge,
Court of Small Causes, Madras.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.G.Balaji Prasad, Advocate, S.R.No. 101486
+lcc to Mr.S.Vadivel, Advocate, S.R.No. 100642

C.M.A.No.3228 of 2009

RJI (CO)
GN(04/09/2020)

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