

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.1013 OF 2012

K.Suresh

... Appellant/Petitioner

Vs

The Commandant,
Tamilnadu Special Police,
II Battalion, Avadi,
Chennai-600 054.

...Respondent/Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, to set aside the award passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court - I Poonamalee in MCOP.No.619 of 2009, dated 28.02.2011 and enhance the award amount.

For Appellant : Mr.K.Sivakumar
For Respondent : Mr.S.Jaganathan
(Government Advocate)

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking for enhancement of the compensation awarded by the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court - I Poonamalee.

2. It is the case of the appellant/claimant that on 24.06.2009 at about 9.00 hours while he was riding his bicycle near Vinayagapuram, Ambathur-Redhills road junction, a lorry bearing Registration No.TN-20-G-0068 belonging to the respondent, came in a high speed and dashed behind the appellant's bicycle. Due to the which, the appellant sustained multiple injuries all over his body. The accident has occurred due to the rash and negligent driving of the driver of the lorry. Hence, the appellant has filed a claim petition before the Tribunal against the respondent, claiming a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, the appellant has examined himself as P.W.1 and the Doctor who issued disability certificate was examined as P.W.2 and marked as many as nine documents viz., Exs.P1 to P9. The respondent has not examined any evidence or documents before the Tribunal substantiate their claim.

4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the lorry. Therefore, the Tribunal has awarded a sum of Rs.87,700/- with 7.5% interest as compensation to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. The learned counsel for the appellant would contend that the the Tribunal has taken 35% as permanent disability, whereas the Doctor has awarded 40% as permanent disability. He would further contend that the Tribunal awarded only a very meager amount as compensation and it is not suffice when compared to the injuries sustained by the claimant. He would further contend that in MVI report also it has been stated, that the accident has occurred due to the rash driving of the driver of the lorry. Hence, he prays for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the respondent would contend that the Tribunal erred in fixing the liability on their part and would further contend that the appellant herein has invited the accident and there is no fault on the side of the driver of the lorry as stated in MVI report. He also contend that all the averments made by the appellant in the claim petition are false.

8. Heard both sides and perused the materials available on record.

9. With regard to negligence aspect the Tribunal based on Ex.P.1/F.I.R and Ex.P.2 Rough sketch, which supports the case of the claimant rather than respondent, concluded that the accident occurred due to the rash and negligent driving of the driver of the Lorry. There was no valid rebuttal evidence on the side of the respondent to challenge the negligence aspect before the Tribunal. Hence this Court is not inclined to interfere with the said finding and the same is confirmed as such.

10. With regard to quantum, the details of the compensation awarded by the Tribunal are as follows:

Heads	Amount awarded by the Tribunal (Rs.)
Loss of future amenities of his disability	35,000/-
Pain and suffering	5,000/-
Medical Expenses	37,700/-
Extra Nourishment	5,000/-
Transport to Hospital	5,000/-
Total	87,700/-

11. In view of the above, the amount awarded by the Tribunal towards Transportation, pain and sufferings and extra nourishment are very low. Hence, the same are enhanced to Rs.20,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards attender charges and damage to clothes, hence this Court is inclined to grant a sum of Rs.5,000/- and Rs.2,000/- respectively towards the same. The Tribunal has also erred in considering 35% towards disability, whereas the Doctor assessed the partial and permanent disability as 40%. Hence, a sum of Rs.2,000/- per percentage of disability is awarded and Rs.80,000/- was awarded under the head permanent disability.

12. The amount of compensation of Rs.87,700/- is enhanced to Rs.1,81,000/- under the following heads :-

Heads	Amount (Rs.)
Permanent disability	80,000/-
Pain and sufferings	20,000/-
Transport	10,000/-
Extra Nourishment	10,000/-
Loss of future amenities	54,000/-
Attender Charges	5,000/-
Damage to clothes	2,000/-
Total	1,81,000/-

13. With the above modification, the order of Tribunal in MACTOP No.619 of 2009 is modified and this appeal is partly allowed.

14. The Compensation amount of Rs.87,700/- is enhanced to Rs.1,81,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The respondent is directed to deposit the amount awarded by this Court after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Additional District and Sessions Judge,
Fast Track Court - I
Poonamallee.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.K.Sivakumar, Advocate, S.R.No.2546
+1cc to the Government Pleader, S.R.No.3126

C.M.A.No.1013 of 2012

AK(CO)
CS/14/12/2020

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