

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1492 of 2016

A.Rajeswari

...Appellant/Claimant

Vs.

1.K.P.N.Tours and Travels Pvt. Limited,
23B, Rajaji Street, Swarnapuri,
Salem-636 004.

2.M/s. National Insurance Company Limited,
Divisional Office-I, IInd Floor,
L.R.N.Complex, Saradha College Road,
Salem-636 007

...Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.02.2013 made in M.C.O.P.No.167 of 2010 on the file of the (Motor Accident Claims Tribunal), II Additional Sub Court, Salem.

For Appellant : Mr.A.Yogaraj for
Mr.R.Marudhachalamurthy

For R2 : Mr.S.Arunkumar

R1 : Not Ready Notice

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.02.2013 made in M.C.O.P.No.167 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Salem.

2.The appellant is the claimant in M.C.O.P.No.167 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Salem. She filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the damages caused to

her lorry in the accident that took place on 18.03.2007.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company, being the insurer of the bus to pay a sum of Rs.1,19,000/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant contended that the Tribunal failed to note that Exs.P1 and P2 clearly reveals the manner of the accident and the damages caused to the appellant's vehicle. The 2nd respondent-Insurance Company has not denied Ex.P1/FIR and Ex.P2/Photographs. The Tribunal erroneously rejected Ex.P3/Service bill and Ex.P4/Estimate bill series, which clearly disclose the damages caused to the vehicle and the cost incurred for repairing the vehicle, on the ground that the said documents were not stamped and the appellant failed to examine the author of the documents. Exs.P3 and P4 are bills, which need not be stamped and the Tribunal ought to have awarded compensation as per Exs.P3 and P4 to the appellant. The appellant has suffered loss of income for 5 months due to damages caused to her lorry. The Tribunal ought to have granted compensation towards loss of income for 5 months and prayed for enhancement of compensation.

6.Per contra, Mr.S.Arunkumar learned counsel appearing for the 2nd respondent-Insurance company contended that Exs.P3 and P4 are only quotations and they are not authenticated and the appellant did not examine the author of the documents and failed to prove the same. The Tribunal has accepted the evidence of P.W.2 and awarded a sum of Rs.1,19,000/- towards damages caused to the lorry. The appellant failed to prove the loss of income and hence she is not entitled for any enhancement and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.From the materials on record, it is seen that the appellant has claimed a sum of Rs.4,00,000/- as compensation for damages caused to the lorry. The appellant proved the damages caused to her lorry through the photographs which was marked as Ex.P2. The Service Bills and Estimate bills were marked as Exs.P3 and P4 respectively. The Tribunal rejected Exs.P3 and P4,

on the ground that those documents were not authenticated and the same were not proved by examining the author of the document. There is no error in the said rejection of Exs.P3 and P4 by the Tribunal. The appellant has examined one Sundaramoorthy as P.W.2 and marked Ex.P5/Motor Survey report. Ex.P5/Motor Survey report is the document, which estimates the damages caused to the lorry at Rs.1,19,000/-. The Tribunal accepting the evidence of P.W.2 and Ex.P5/Motor Survey report, awarded a sum of Rs.1,19,000/- as compensation to the appellant towards damages caused to her lorry and the same is proper. The appellant claimed that she is the owner of the lorry and was earning a sum of Rs.1,00,000/- per month by using the lorry and she lost her income for 5 months due to the damages caused to her lorry in the accident and claimed a sum of Rs.5,00,000/- towards loss of income. But, the appellant has not produced any document to prove that she was earning a sum of Rs.1,00,000/- per month through her lorry and lost her income for 5 months. At the same time, the appellant would have lost her income during the period when the lorry was in repair. Considering the same, a sum of Rs.50,000/- is granted towards loss of income. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Damages caused to the vehicle	1,19,000/-	1,19,000/-	Confirmed
2.	Loss of income	—	50,000/-	Granted
	Total	Rs.1,19,000/-	Rs.1,69,000/-	Enhanced by Rs.50,000/-.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,19,000/- is hereby enhanced to Rs.1,69,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced compensation. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.167 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Salem. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court,

along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn

To

The II Additional Sub Judge,
Motor Accidents Claims Tribunal,
Salem.

COPY TO

The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Mr.R.Marudhachala Murthy, Advocate, S.R.No.16655

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 16366

C.M.A.No.1492 of 2016

SSI (CO)
GN(09/02/2021)

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