

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31/08/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1023 of 2015

and

M.P.Nos.1 and 2 of 2015

M.R.Dhandapani

...Appellant/Petitioner

Vs.

1.Nallathambi

2.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram.

3.The Divisional Manager,
New India Assurance Company Limited,
No.42, Big Street,
Tiruvannamalai.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the portion of the award from Rs.10,16,850/- granted by the learned Motor Accident Claims Tribunal, Additional Sub-Court, Tiruvannamalai, in M.C.O.P. No.13 of 2011, dated 29.02.2012, and award a just compensation of Rs.20,00,000/- with accrued interest.

For Appellant

:

M/s.M.Gnanasekar

For Respondents

:

Mr.K.J.Sivakumar for R2
Mr.J.Chandran for R3

WEB COPY

J U D G M E N T

The short facts of the case are as follows:-

On 18.11.2010 at about 08.30 p.m., the claimant was travelling as a passenger in the bus of the Transport Corporation bearing registration No.TN-32N-2571 on the Tindivanam Main Road. At that point of time the lorry bearing registration No.TN-39/4569 had been driven by its driver in a rash and negligent manner and dashed against the bus. In the result the petitioner and other passengers had sustained injuries, hence the claim petition had been leveled against the owner and insurer of the offending vehicle.

2. The Insurance Company had filed a counter statement and refuted the crime petition. This respondent denied the age, income, occupation, nature of injuries, mode of treatment and expenditures. The claimant had not travelled in the State Transport Corporation bus. Further, the action had not been committed by the driver of the lorry, actually he had driven the lorry in a cautious manner. The respondent denied the disability. Further, the claim amounts are in the higher side.

3. The Transport Corporation had filed a counter statement and stated that the lorry bearing registration No.TN-39-4569 came from the opposite direction on Tindivanam Main Road and dashed against the bus, as a result claimant and other passengers had sustained injuries. Therefore, the Transport Corporation is not likely to pay any compensation to the claimant. Further, the F.I.R had been registered against the driver of the lorry for his rash and negligent driving.

4. After considering the averments of all parties the Tribunal had framed two issues. On the side of the claimant three witnesses were examined and twenty one documents were marked. On the side of the Insurance Company one witness was examined and one document was marked. On the side of the Transport Corporation one witness was examined and no document was marked.

5. After recording evidence from all sides and on perusing the exhibits marked by both parties, the Tribunal had awarded a sum of Rs.10,16,850/- as compensation with interest at the rate of 7.5% and directed the Insurance company to pay the said compensation amount to the claimant. Not being satisfied with the quantum of compensation the claimant has filed an appeal.

6. The highly competent counsel Mr.N.Gnanasekar, appearing for the appellant submits that the claimant had spent a sum of Rs.4,87,300/- towards medical expenses. The claimant had been admitted at a private hospital at Porur wherein he had undergone treatment as an inpatient. The practicing Doctor who is an Ortho Specialist had certified that the claimant had sustained 25% disability. The Neuro Doctor had certified that the claimant had sustained grievous injuries on his head and lost his memory power and a change in his speech besides he is unable to move from place to place without the support of any one. Further, the Tribunal had not granted adequate compensation under the head of transport, nutrition, attender charges and loss of amenities.

7. The highly competent counsel appearing for the appellant submits that the appellant is totally disabled, in is suffering from mental instability. As such, he had sustained permanent disability, hence multiplier method had been adopted. The claimant had sustained multiple bone fracture injuries inside his head, right thigh, hip, nose, right hand, for ahead, right leg, right shoulders. Both the practicing Doctors had certified that the claimant had sustained 65% disability, the claimant's age is 40 years and he is a business man besides being a registered contractor and Income Tax Assessee and he was earning Rs.40,000/- per month. After the accident, he is unable to do his normal avocation. The claimant is a registered contractor attached to the Forest Department. Hence, the very competent counsel entreats the Court to grant an additional compensation Rs.31,69,141/- with interest.

8. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the practicing Doctor who is physiologist had been examined as PW.2 and he had adduced evidence stating that the claimant is mentally disturbed to an extent of 40%, besides the Artho Doctor had certified that the claimant had sustained multiple bone fracture injuries and he has certified that the claimant had sustained 25% disability. The claimant is a registered contractor and also an Income Tax Assessee. The claimant had undergone treatment at three various hospitals as inpatient as well as outpatient besides he is a middle aged man aged about 40 years. On considering the medical records and the practicing doctors opinions, the patient is now a totally disabled person since a vital organ like the brain and nervous system is seriously affected. Therefore, this Court allows

the appeal and granted compensation a sum of Rs.9,83,150/- with interest at the rate of 7.5% from the date of the claim petition till the date of 29.02.2012 and also for the period from January 2015 till the payment of additional compensation.

9. This Court has split the compensation amount as follows:
Rs.2,00,000/- under the head of attender charges since the claimant is always in need of human support; Rs.50,000/- under the head of transport as additional compensation; Rs.33,150/- towards nutrition as additional compensation; Rs.3,00,000/- under the head of loss of earning during his medical treatment and subsequent period; Rs.1,00,000/- under the head of pain and suffering; Rs.3,00,000/- under the head of loss of amenities, disfigurement and physical discomfort which is of a permanent in nature. Accordingly, the above appeal is allowed.

10. This Court directs the 3rd respondent herein/Insurance Company to execute the additional award as per this Court's findings within a period of six weeks by way of deposit of the claim amount into the Trial Court, within a period of six weeks from the date of receipt of a copy of this order. After, such a deposit being made, it is open to the claimant to withdraw the entire compensation amount after filing a memo along with a copy of this order and after identifying the learned Trial Court Advocate Mr.N.Palani. Accordingly, the above appeal is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Ub

To

The Motor Accident Claims Tribunal,
Additional Sub-Court,
Tiruvannamalai.

WEB COPY

Copy to

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

1 CC to Mr.K.J.Sivakumar, Advocate SR.No. 46767

C.M.A.No.1023 of 2015
and M.P.Nos.1 and of 2015

PUR (CO)
PSI (11.09.2015)



WEB COPY