

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3635 of 2012 &
M.P.No.1 of 2012
and
Cross Objection No.11 of 2013

C.M.A.No.3635 of 2012

M/s.New India Assurance Company Limited,
Motor Third Party Claims Office,
No.45, Moore Street,
Chennai-600 001. ...Appellant/2nd Respondent

Vs.

1.Mrs.Kala
2.Mr.R.Raja ... Respondents/Petitioner/
Ist Respondent
(2nd respondent exparte in lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.2937 of 2010, on the file of Motor Accidents Claims Tribunal IV Court of Small Causes, Chennai, dated 08.06.2012.

For Appellant : Mr.M.B.Gopalan
For Respondents : Mr.C.Munuswamy for R1

Cross Objection No.11 of 2013

Mrs.Kala ... Cross Objector/
Ist Respondent

Vs.

1.Raja

2.M/s.New India Assurance Company Limited,
Motor Third Party Claims Office,
No.45, Moore Street,
Chennai-600 001.

... Respondents /II Respondent/
Appellant

PRAYER: Cross Objection is filed under Order 41 Rule 22 of CPC to enhance the award with interest and costs.

For Cross Objector : Mr.C.Munuswamy

For Respondents : Mr.B.Gopalan for R2

C O M M O N J U D G M E N T

The short facts of the case are as follows:-

On 22.06.2010, at about 20.00 hours, when the petitioner was walking in front at Door No.4/1, Kotturpuram, the bike bearing registration No.TN-07-BE-5697, coming on the same road from south to north direction and driven in a rash and negligent manner dashed against the petitioner. As a result, the petitioner sustained multiple grievous injuries. Hence, the petitioner has filed the claim for Rs.2,00,000/- against the respondents, who are the owner and insurer of the bike.

2. The second respondent in his counter has denied the averments in the claim regarding age, income, occupation, address of petitioner, nature of injuries and disability sustained. The second respondent further submits that the F.I.R. was lodged only after 12 days from the date of accident and this clearly casts doubt on the occurrence of accident itself. This respondent denied the averments in the claim that the first respondent drove the bike in a rash and negligent manner and further submitted that if the petitioner had been diligent, she could have avoided the accident. It was submitted that the claim was excessive.

3. The Tribunal, after scrutiny of averments of both parties framed four issues for consideration. On the side of the petitioner, two witnesses were examined and ten documents were marked. On the side of the second respondent, one witness was examined and two documents were marked. The Tribunal, after scrutiny of oral and documentary evidence awarded a sum of Rs.1,29,350/- as compensation, with interest at the rate of 7.5% per annum.

4. Aggrieved by the award passed by the Tribunal, the second respondent / Insurance Company has filed the appeal in

C.M.A.No.3635 of 2012.

5. Not being satisfied with the quantum of compensation, the petitioner has also filed a Cross Objection in Cros.Obj.No.11 of 2013 and claimed additional compensation of Rs.50,000/-.

6. The learned counsel for the appellant Mr.M.B.Gopalan submits that the Tribunal failed to appreciate that the claimant had undergone minimal treatment for 2 days, after which, no further treatment was made out. The learned counsel further submits that the Tribunal ought to have considered that the injuries were not serious and the disability was being exaggerated for the purpose of the case. The learned counsel further submits that the award granted under the various heads were excessive and hence, it was prayed to set-aside the award passed by the Tribunal.

7. The learned counsel for the cross-objector/claimant, Mr.C.Munuswamy submits that the Tribunal erred in awarding only a sum of Rs.70,000/- towards permanent disability as against the claim of Rs.1,00,000/-, when the doctor, who assessed the disability as 55%, was examined as P.W.2 and he marked the disability certificates and X-ray as Exs.P9 and Ex.P10 respectively. The learned counsel further submits that the Tribunal erred in not awarding any sum towards loss of earning power as against the claim of Rs.25,000/- as the injured / cross objector suffered serious injuries and this has affected her future career. Hence, it was prayed to grant additional compensation of Rs.50,000/- with interest.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers, this Court is of the view that except for the scan bill for Rs.350/-, no other documents have been marked to prove that the claimant had sustained head injury. Hence, the award of Rs.10,000/- and Rs.20,000/- granted by the Tribunal under the heads of attender charges and pain and suffering respectively is slightly on the higher side. This Court modifies the award for attender charges to Rs.5,650/- and modifies the award for pain and suffering to Rs.15,000/-. The award granted by the Tribunal under the other heads are appropriate. Hence, this Court scales down the award of Rs.1,29,350/- granted by the Tribunal to Rs.1,20,000/-. The rate of interest fixed by the Tribunal remains unaltered.

9. This learned counsel for the appellant / Insurance Company submits that the entire compensation amount has already been deposited. Now, it is open to the claimant to withdraw the modified compensation amount, as fixed by this Court i.e., a sum of Rs.1,20,000/- with interest at the rate of 7.5% per annum

from the date of filing the claim till date of payment of compensation. Likewise, the appellant / Insurance Company is permitted to withdraw the balance compensation amount with proportionate interest.

10. In the result, the appeal filed by the appellant / Insurance Company in C.M.A.No.3635 of 2012 is partly allowed and the Cross Objection in Cros.Obj.No.11 of 2013 filed by the claimant is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s

To

The IV Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

C.M.A.No.3635 of 2012 &
M.P.No.1 of 2012
and
Cross Objection No.11 of 2013

aa23/12/2015

WEB COPY