

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1687 of 2015

and

M.P.Nos.1 and 2 of 2015

M/s.Oriental Insurance Company Limited,
No.115, Broadway,
Chennai - 600 108.

Appellant/2nd Respondent

Vs.

1.S.K.Ravi

...

1st Respondent/Petitioner.

2.Jayakumar Fredrick Thomas
(R2 Exparte in lower court)

2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.5268 of 2012, dated 21.08.2014, on the file of the Motor Accident Claims Tribunal, Small Causes Court - V Judge, Chennai.

For Appellant :M/s.J.Chandran

For 1st Respondent :Mr.K.Varadha Kamaraj

J U D G M E N T

On 26.09.2012 at about 07.30 a.m., when the claimant was travelling in the auto bearing registration No.TN-09K-2793, on the Kotturpuram Main Road, the driver of the auto had driven it in a rash and negligent manner, at high speed, due to which the auto capsized. Consequently, the claimant sustained grievous injuries. Hence, the claim had been levelled against the owner and insurer of the vehicle.

2. The Insurance Company had filed a counter statement and opposed the claim petition. The respondent denied the averments regarding age, income, nature of injuries and period of treatment. The driver of the auto did not possess valid

driving licence. Besides, he had not committed the said accident.

3. On recording both sides averments, the Tribunal had framed three issues. On the side of the claimant two witnesses were examined and six documents were marked. On the side of the respondents no witnesses, no documents. After recording evidence of witnesses, the Tribunal had granted Rs.5,73,000/- with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the above appeal.

4. The highly competent counsel Mr.J.Chandran, appearing for the Insurance Company submits that the Tribunal had granted compensation under irrelevant heads. The claimant had undergone medical treatment at Government Hospital, Royapettah, but the Tribunal had awarded a sum of Rs.5,000/- for medical expenses. The Tribunal had awarded Rs.2,92,500/- under the head of loss of earning capacity, which is not appropriate. Since, the Tribunal had awarded a sum of Rs.1,00,000/- under the head of disability. Further, the driver of the Auto did not possess valid driving licence. Hence, the very competent counsel entreats the Court to set aside the award.

5. The learned counsel Mr.K.Varadhakamaraj, appearing for the claimant submits that the accident had been committed by the driver of the auto and hence F.I.R has been registered against him. The claimant had undergone medical treatment for a period of more than three months as an inpatient. During medical treatment period, a surgical operation was conducted and steel plate has been fixed in the operated area. The Doctor had assessed the disability as 50%. After the accident, the claimant is unable to do his avocation as mason. Therefore, the Tribunal had awarded compensation under the head of loss of earning capacity.

6. On 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 Tribunal had granted compensation under irrelevant heads i.e., under the head of loss of earning capacity. Therefore, this Court restructures the compensation as follows:

- Rs.1,00,000/- towards disability;
- Rs.25,000/- towards transport;
- Rs.25,000/- towards nutrition;
- Rs.40,000/- towards loss of earning during medical treatment period;
- Rs.10,000/- towards medical expenses inspite of non production of medical bills; since he underwent a surgical operation and has undergone treatment as an outpatient;
- Rs.75,000/- towards pain and suffering;

Rs.1,55,000/- towards loss of amenities and loss of comfort which is permanent in nature. In total, this Court awards Rs.4,30,000/- as compensation. The rate of interest fixed by the Tribunal is unaltered.

7. The Insurance Company had deposited 50% of the award amount. Now, this Court directs the appellant herein to deposit the balance compensation with accrued interest thereon, as per this Courts findings 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 with interest after filing a memo, along with a copy of this order before the trial Court. Hence, the above appeal is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Presiding Judge,
The Motor Accident Claims Tribunal,
Small Causes Court - V Judge, Chennai.

Copy to:

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

+ 1 cc to Mr.J.Chandran, Advocate SR 53493

+ 1 cc to K.Varadhakamaraj, Advocate SR 53129

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