IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 29/09/2015

DATED: 07/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1547 of 2014
&
M.P.No.1 of 2014
and
Cross Objection No.94 of 2015

C.M.A.No.1547 of 2014

The United India Insurance Company Limited,
134, Greams Road,
Chennai-06. ...Appellant/R2

Vs.

1.R.Natarajan
2.V.Munusamy
(R2 Exparte in Lower Court) ...Respondents/ Claimants & R2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set-aside the award made in M.C.O.P.No.2201 of 2010, dated 11.09.2012, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.C.R.Krishnamoorthy

For Respondents : Mr.A.A.Venkatesan for R1

Cross Objection No.94 of 2015

R.Natarajan ...Cross Objector

Vs.

1. The United India Insurance Company Limited,
   134, Greams Road, Silingi Building,
   Chennai-06.

2. V.Munusamy ...Respondents

PRAYER: Cross Objection is filed under Order 41 Rule 22 of CPC to set-aside the judgment and decree passed by the Tribunal in M.C.O.P.No.2201 of 2010, dated 11.09.2012, on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai and allow the Cross Objection by enhancing the additional compensation of Rs.5,00,000/- as prayed for by the Cross Objector.

For Cross Objector : Mr.A.A.Venkatesan

For Respondents : Mr.C.R.Krishnamoorthy for R1

J U D G M E N T

The short facts of the case are as follows:-

On 12.04.2010, at about 4.30 p.m., when the claimant was travelling as a pillion rider, on a motorcycle bearing registration No.TN-07-A-5306, on the Sathya Nagar Main Road, the lorry bearing registration No.TN-23-L-4698, driven by its driver in a rash and negligent manner, on the same direction, dashed behind him. As a result, he had sustained injuries. Hence, the claim petition had been levelled against the owner and insurer of the lorry.

2. The Insurance Company had filed a counter statement and refuted the claim. The Insurance Company had further submitted that the claimant had consumed alcohol and as such, there is negligence on the part of the claimant. The averments regarding age, income, occupation, nature of injuries and period of treatment, disability were denied. Further, from the xerox copy of the discharge summary, it is seen that the claimant had met with an accident while crossing the road on 12.04.2010 at around 4.45 p.m., near Ezhil Nagar, Korukkupet under the influence of alcohol. Hence, the contention of the claimant that he was travelling as a pillion rider in the motorcycle bearing registration No.TN-07-A-5306 is not genuine.

3. After recording the averments of both parties, the Tribunal had framed four issues, viz.,

"(i) Whether the accident had happened due to the rash and negligent driving of the driver of the lorry bearing registration No.TN-23-L-4698?

(ii) Whether the respondents are liable to pay the compensation?

(iii) Whether the petitioner is entitled for the compensation?

(iv) To what relief the petitioner is entitled to?"

4. On the side of the claimant, two witnesses were examined and 10 documents were marked. On the side of the respondents, four witnesses were examined and four documents were marked.

5. After recording the evidence of both parties and on perusing the exhibits marked by them, the Tribunal had awarded a sum of Rs.8,56,800/- with interest at the rate of 7.5% per annum.

6. Aggrieved by the said award and decree, the Insurance Company has filed the above appeal in C.M.A.No.1547 of 2014 and challenged the award.

7. Not being satisfied with the quantum of compensation, the claimant has filed Cross Objection No.94 of 2014 and claimed additional compensation.

8. The highly competent counsel Mr.C.R.Krishnamoorthy appearing for the Insurance Company submits that the claimant had consumed alcohol and he was injured in the alleged accident while crossing the road under the influence of alcohol without seeing the oncoming lorry. The Tribunal had awarded a sum of Rs.6,42,600/- under the head of 'disability', after adopting multiplier method which is not appropriate in the instant case. Besides, the doctor had assessed the disability at 70%, which is also on the higher side. Further, the Tribunal had awarded a sum of Rs.1,00,000/- under the head of 'pain and suffering' which is also on the higher side. Hence, the highly competent counsel entreats the Court to set-aside the award.

9. The highly competent counsel Mr.A.A.Venkatesan appearing for the claimant submits that the claimant was travelling as a pillion rider. Therefore, he was not responsible for the said accident. Further, the FIR has been registered against the driver of the offending lorry and the said lorry had been insured with the Insurance Company.

Therefore, the entire liability has been fastened on the part of the insurance company. Further, the claimant's right leg had been amputated above knee level and he was aged about 24 years. After the accident, he is unable to do his avocation as mason. Therefore, multiplier method has been adopted by the Tribunal and compensation was granted. However, the Tribunal had not granted an adequate compensation under the heads of 'transport', 'nutrition', 'loss of amenities' etc. Hence, the highly competent counsel entreats the Court to enhance the compensation amount.

10. Per contra, Mr.C.R.Krishnamoorthy appearing for the Insurance Company submits that the claimant had consumed alcohol and crossed the road in a negligent manner and invited the said accident near Ezil Nagar, Korukkupet. The same was confirmed by the practicing doctor while he attended the claimant for medical treatment. The same was mentioned in the medical records. Therefore, the insurance company is not liable to pay compensation.

11. The highly competent counsel Mr.A.A.Venkatesan appearing for the claimant further submits that there was no medical test conducted by the concerned doctor in order to prove that the claimant had consumed alcohol. Further, the Investigation Officer attached to the Traffic Investigation Wing had not adduced any evidence regarding alcohol consumption by the claimant and had also not stated that the claimant crossed the road in a negligent manner. Therefore, the claimant is entitled to receive an adequate compensation since the negligence and liability have been established against the driver of the lorry and its insurance company respectively.

12. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, this Court is of the view that the F.I.R. has been registered against the driver of the lorry which has been insured with the United India Insurance Company Limited. The claimant's age was 24 years and he was involved in construction work as mason and his right leg had been amputated above knee level. The Tribunal had adopted multiplier method which is not applicable in the instant case as the claimant can move from one place to another place without support of others. However, on considering the disability sustained by the claimant and the consequent impact on his profession, this Court is of the view that the award granted by the Tribunal is on the lower side. Therefore, this

Court restructures and reassesses the compensation as follows:-

Rs.2,10,000/- is awarded towards disability; Rs.60,000/- towards loss of income during medical treatment period; Rs.50,000/- towards transport; Rs.25,000/- toward nutrition; Rs.10,000/- towards medical expenses in spite of absence of medical bills; Rs.60,000/- towards attender charges; Rs.1,00,000/- under the head of pain and suffering; Rs.5,00,000/- under the head of loss of amenities and loss of comfort and disfigurement which are permanent in nature. In total, this Court awards Rs.10,15,000/-. After subtracting initial compensation of a sum of Rs.8,56,800/-, this Court awards Rs.1,58,200/- as additional compensation to the claimant. This additional compensation amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till the date of payment of compensation.

13. Therefore, this Court directs the Insurance Company to deposit the entire compensation amount with interest as per this Court's order, after deducting earlier deposits made by the Insurance Company, within a period of six weeks from the date of receipt of a copy of this order, before the Tribunal. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon, after filing a Memo, along with a copy of this order.

14. In the result, the appeal filed by the Insurance Company in C.M.A.No.1547 of 2014 is dismissed and the Cross Objection filed by the claimant in Cross Objection No.94 of 2015 is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

r n s

To

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

Copy to

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

1 CC to Mr.C.R.Krishnamoorthy, Advocate SR.No. 54417

C.M.A.No.1547 of 2014 &
M.P.No.1 of 2014
and
Cross Objection No.94 of 2015

KSJ (CO)
PSI (02.11.2015)