

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.395 of 2015

Parasuraman Appellant/Petitioner

Vs.

1. Mariappan

2. M/s.IffCO Tokio General
Insurance Co., Ltd.,
rep.by its Manager
No.28, North Usman Road
T.Nagar, Chennai-600 017

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 19.12.2012, and made in M.A.C.T.O.P.No.6 of 2010, on the file of the Motor Accident Claims Tribunal - Subordinate Judge, Harur, Dharmapuri District.

For Appellant : Mr.J.Chandran
for Mr.R.Ranganatha Naidu

For Respondents : Mr.N.Vijayaraghavan for R2

J U D G M E N T

The appellant / claimant has preferred the present appeal against the Judgment and Decree, dated 19.12.2012, made in M.C.O.P.No.6 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Court, Harur.

2. The short facts of the case are as follows:-

On 31.08.2009, at about 10.20 hours, when the claimant / appellant was proceeding in his Car bearing registration No.TN02 AJ2901 in Chennai-Krishnagiri National Highways Road, near Giddampatty Junction, a Tractor bearing registration No.TN24

U2432, driven by its driver in a rash and negligent manner, dashed against the Car. As a result, he had sustained grievous injuries. Hence, he filed a claim petition against the owner and insurer of the offending vehicle for compensation.

3. The Insurance Company filed a counter affidavit and refuted the claim petition. It was contended that the claimant / appellant had driven his Car in a drunken mood, at high speed and overtook a vehicle going ahead of his Car. As a result, the Car dashed against the Tractor. The medical records clearly reveals that the claimant / appellant was in a drunken mood. The Tractor has not been covered by necessary documents besides the driver of the Tractor was not in possession of driving licence. The Insurance Company denied the age, income, mode of treatment and disability sustained by the claimant / appellant.

4. After recording the averments of both parties, the Tribunal had framed two issues. On the side of the claimant, two witnesses were examined and fifteen documents were marked. On the side of the respondents, three witnesses were examined and six documents were marked.

5. The Tribunal, after scrutinizing the oral and documentary evidence, awarded a sum of Rs.96,000/- as compensation together with interest at the rate of 7.5% per annum.

6. Not being satisfied with the quantum of compensation, the claimant has filed this appeal.

7. The highly competent counsel Mr.J.Chandran, appearing for the claimant has submitted that the claimant had sustained 30% disability and he had spent a sum of Rs.49,000/- towards medical expenses. Further, the Tribunal had not granted an adequate compensation under the relevant heads. Further, the offending vehicle had been insured with the Insurance Company and a criminal case had been registered against the driver of the offending vehicle. As such, the claimant / appellant is entitled to receive an adequate compensation from the Insurance Company.

8. The very competent counsel Mr.N.Vijayaraghavan appearing for the Insurance Company submitted that the appellant / claimant had driven his Car in a drunken mood, dashed against the Tractor and caused the said accident. Therefore, the entire negligence is on the part of the appellant / claimant. The

claimant had sustained simple injuries. However, the Tribunal had granted an adequate compensation. Further, in the said accident, two vehicles had been involved and as such contributory negligence has to be fastened. But, the same was not followed by the Tribunal. However, an adequate compensation had been granted by the Tribunal. Hence, the learned counsel has prayed this Court to dismiss the appeal.

9. Considering the facts and circumstances of the case, arguments advanced by the highly competent counsel on either side and on perusing the typed set of papers, this Court is of the view that the claimant had sustained 30% disability and he had spent a sum of Rs.49,000/- towards medical expenses. Further, the Tribunal had not granted compensation under the relevant heads. Hence, this Court is inclined to re-assess the compensation as under:

- i. Rs.60,000/- under the head of disability,
- ii. Rs.15,000/- under the head of pain and suffering,
- iii. Rs.10,000/- under the head of transport expenses,
- iv. Rs.10,000/- under the head of nutrition,
- v. Rs.10,000/- under the head of attender charges,
- vi. Rs.15,000/- under the head of loss of earning during the medical treatment period,
- vii. Rs.49,000/- under the head of medical expenses,
- viii. Rs.50,000/- under the head of loss of amenities, since the claimant had undergone a surgical operation, wherein a steel plate was fixed, which is of a permanent nature

Accordingly, in total, this Court grants a sum of Rs.2,19,000/- as appropriate compensation to the appellant / claimant. After deducting the initial compensation of Rs.96,000/-, this Court grants a sum of Rs.1,23,000/-. The said amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit of the amount before the Tribunal.

10. This Court directs the second respondent / Insurance Company to deposit the entire enhanced award amount with interest as mentioned above, and costs, to the credit of M.C.O.P.No.6 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Court, Harur, within a period of six weeks from the date of receipt of a copy of this Judgment. After such a deposit being made, it is open to the claimant to withdraw the

entire award amount after filing a memo along with a copy of this Judgment.

11. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and Decree, dated 19.12.2012, made in M.C.O.P.No.6 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Court, Harur, is modified as stated above. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

krk

To:

The SubOrdinate Judge,
Motor Accident Claims Tribunal,
Harur, Dharmapuri District.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.53624

+1cc to Mr.R.Ranganatha Naidu, Advocate, S.R.No.53492

C.M.A.No.395 of 2015

SR(CO)

CA(12/02/2016)

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