

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11/09/2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.460 of 2015

Venkatachalam

...Appellant/Petitioner

Vs.

1.Loganathan

2.The United India Insurance Company Limited,
Micro Office, No.1-15-24H, Shanmuga Complex,
1st Floor, New Idappadi Road,
Sankari Taluk,
Namakkal District.

(The 1st respondent remained
ex-parte before the Tribunal,
hence notice may be dispenses
with for 1st respondent
in this appeal)

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.237
of 2011, dated 28.08.2012, on the file of the Motor Accident
Claims Tribunal, Additional District Court at Namakkal.

For Appellant : M/s.Ma.Pa.Thangavel

For Respondents : Mr.T.Ravichandran for R2
R1-exparte

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J U D G M E N T

The short facts of the case are as follows:-

On 01.11.2008, at about 05.45 p.m., when the petitioner was
travelling as a pillion rider, on TVS-Suzuki bearing registration
No.TN-46/B-4968, on the Namakkal Main Road, the rider of the

motorcycle had ridden it in a negligent manner and dashed against a Yamaha two wheeler. As a result, the petitioner had sustained injuries. Hence, a claim case had been levelled against the owner and insurer of the offending vehicle.

2. The Insurance Company had filed a counter statement and opposed the claim. The respondent submits that the rider of the Yamaha Motorcycle had committed the said accident by driving the motorcycle at a high speed in order to overtake the bus. The claimant had not impleaded the owner and insurer of the Yamaha Motorcycle. The averments regarding age, income and occupation, nature of injuries and disability of claimant was denied.

3. After recording averments of bothsides, the Tribunal had framed two issues. On the side of the claimant, two witnesses were examined and seventeen documents were marked. On the side of the respondents, no witness, no documentary proof. After recording the evidence of the witnesses and on perusing the exhibits, the Tribunal had granted a sum of Rs.4,70,000/- as compensation, with interest at the rate of 7.5% per annum. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal.

4. The learned counsel Mr.Ma.Pa.Thangavel, appearing for the petitioner submits that the claimant had sustained multiple bone fracture injuries and he had undergone medical treatment for about 20 days as inpatient at different specialty hospitals. During medical treatment period two surgical operations were conducted and steel plates were fixed in the operated area. Besides, bone grafting was conducted. The Doctor had assessed the disability at 40%. The claimant requires future medical treatment also. The fractured bones were mal-united. As such, he is unable to do his business as a salesman in the departmental stores in a standing position. The claimant has spent a sum of Rs.2,86,000/- towards medical expenses. Hence, the very competent counsel entreats the Court to grant additional compensation.

5. The learned counsel Mr.T.Ravichandran, appearing for the Insurance Company submits that actually the accident had been committed by the rider of the Yamaha Motorcycle. As such the necessary parties ought to have been impleaded but the same was not done. The Doctor had assessed the disability as 45% which is on the higher side, since the claimant had sustained simple injuries. However, the Tribunal had granted adequate compensation to the claimant. Hence, the very competent counsel entreats the Court to dismiss the above appeal.

6. 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, it is seen that the claimant had undergone three surgical operations on both thighs and hip. Besides, skin grafting and bone grafting were conducted. Steel plates were fixed in the operated area. The claimant's occupation was as a salesman in the departmental store. As such, he is unable to do his job in a standing position for a long time which shows that he is permanently disabled. Further, the claimant had spent a sum of Rs.2,86,000/- for medical expenses. The claimant had undergone medical treatment at two different hospitals for a considerable period. Hence, this Court grants additional compensation as follows:

Rs.50,000/- towards pain and suffering;
Rs.15,000/- towards transport;
Rs.60,000/- towards loss of earning during medical treatment period;
Rs.15,000/- towards attender charges;
Rs.10,000/- towards nutrition;
Rs.1,80,000/- towards loss of amenities, loss of comfort since the claimant had undergone three surgical operations and two bone grafting and skin grafting treatment. In total, this Court awards a sum of Rs.3,30,000/- as additional compensation with interest at the rate of 7.5% per annum from the date of filing the claim till 28.08.2012 and from 11.02.2015 till date of payment of compensation. The appeal value is Rs.3,30,000/-. Hence, this Court allows the above appeal.

7. This Court directs the Insurance Company to deposit the said additional compensation within a period of six weeks from the date of receipt of this order before the Trial Court. 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. Accordingly, the above appeal is allowed. There is no order as to costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Principal District Judge,
Namakkal.

1 CC to M/s.Ma.Pa.Thangavel, Advocate SR.No. 49904

C.M.A.No.460 of 2015

AK (CO)
PSI (14.10.2015)



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