

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/10/2015

CAV ON 01/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.Nos.993 of 2015 and 364 of 2015

United India Insurance Company Limited,
No.70, NSC Bose Road,
Chennai-1.

.... Appellant in
C.M.A.No.993/2015 &
Second Respondent in
C.M.A.No.364 of
2015/2nd Respondent

Vs.

1.M.Santhosh Kumar

.... First respondent in
C.M.A.No.993 of 2015 &
Appellant in C.M.A.No.364 of
2015/petitioner

2.G.Raghuramaiah

.... Second Respondent in
C.M.A.No.993 of 2015 &
First Respondent in
C.M.A.No.364 of 2015/
1st Respondent

PRAYER in C.M.A.No.993 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 16.09.2014 made in M.C.O.P.No.1331 of 2011, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

PRAYER in C.M.A.No.364 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to enhance the amount awarded in M.C.O.P.No.1331 of 2011, dated 16.09.2014, on the file of Motor Accidents Claims Tribunal, (II Small Causes Judge), Chennai.

For Appellant : Mr.S.Arunkumar in C.M.A.No.993 of 2015

C.M.A.No.364 of 2015

For Respondents : Mr.S.Udayabhanu
For Mr.K.Varadhakamaraj for R1 in
C.M.A.No.993 of 2015

: Mr.S.Aunkumar for R2 in
C.M.A.No.364 of 2015

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

The short facts of the case are as follows:-

On 03.03.2011, at about 11 p.m., when the claimant was proceeding on his motorcycle bearing registration No.TN-05-AA-9102, on the A.A.Road, Vyasarpadi, the motorcycle bearing registration No.TN-04-AC-2400, coming from the opposite direction and ridden in a negligent manner, dashed against the claimant's motorcycle. As a result, he had sustained injuries. Hence, the claimant had levelled a claim petition against the owner and insurer of the motorcycle.

2. The Insurance Company had filed a counter statement and refuted the claim petition. The Insurance Company had submitted that the accident had been committed by the claimant in support of which, the Police had filed the charge sheet, wherein it is revealed that the claimant and two others had proceeded on the claimant's motorcycle, which is against the Motor Vehicles Act. The Insurance Company denied the averments regarding place, date and time of accident, nature of injuries, period of treatment, expenses incurred and disability. Further, at the time of accident, the first respondent's vehicle was not insured with the Insurance Company and the rider of the motorcycle did not possess valid driving licence. Initially, the claimant has claimed a sum of Rs.6 lakhs and as an afterthought, he filed enhancement petition and claimed Rs.12 lakhs. Thereafter, the claimant had filed another enhanced claim petition and claimed a sum of Rs.50 lakhs, as an afterthought.

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

"(i) Whether the accident had happened due to the rash and negligent riding of the rider of the first respondent, who rode his motorcycle bearing registration No.TN-04-AC-2400?

(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 Insurance Company, no witnesses, no documents.

5. After recording the evidence of the witnesses and on perusing the exhibits marked by the claimant, the Tribunal awarded a sum of Rs.24,44,500/- with interest at the rate of 7.5% per annum.

6. Not being satisfied with the quantum of compensation, the claimant has filed an appeal in C.M.A.No.364 of 2015 and claimed additional compensation of a sum of Rs.10 lakhs.

7. Aggrieved by the award and decree, the Insurance Company has filed an appeal in C.M.A.No.993 of 2015 and challenged the portion of the award i.e., a sum of Rs.11,00,000/- with proportionate interest thereon.

8. The highly competent counsel Mr.S.Arunkumar appearing for the Insurance Company submits that the claimant and two others were proceeding on his motorcycle and dashed it against the first respondent's motorcycle. As such, the claimant is also responsible for the said accident. Therefore, contributory negligence has to be attributed to the claimant. Therefore, the owner and insurer of the claimant's vehicle are necessary parties in the instant case but they have not been impleaded as necessary parties. Therefore, the claim petition is not maintainable for non-joinder of parties. The Investigation Officer, who is attached to the Traffic Investigation Wing has filed charge sheet, which reveals that three persons including the claimant were proceeding on the motorcycle bearing registration No. TN-05-AA-9102 and they committed the said accident. The highly competent counsel further submits that the tribunal had adopted multiplier method and awarded compensation of a sum of Rs.17,01,000/- under the head of permanent disability, which is not appropriate in the instant case. Further, the doctor had certified that the claimant had sustained 90% disability, which is on the higher side. The Tribunal had also granted a sum of Rs.1,00,000/- under the head of mental agony, which is not relevant in the instant case. Hence, the highly competent counsel Mr.S.Arunkumar entreats the Court to scale down the compensation.

9. The highly competent counsel Mr.S.Udayabhanu representing on behalf of Mr.K.Varadhakamaraj submits that the claimant was proceeding on his motorcycle bearing registration No.TN-05-AA-9102, on 03.03.2011 at about 11 p.m., on the A.A. Road, Vysarpadi and at that point of time, the motorcycle bearing registration No.TN-04-AC-2400, had been ridden by its rider in a rash and negligent manner, due to

which, it dashed against the claimant's vehicle. As a result, the claimant had sustained multiple bone fracture injuries and has been put into a vegetative condition. Hence, the criminal case has been registered against the rider of the first respondent's vehicle in Crime No.3115 of 2011, on the file of G3, Kilpauk Traffic Investigation Wing, Chennai-10. Further, the criminal case had been proceeded with against him. Therefore, the entire negligence lies on the part of the first respondent's vehicle rider. The offending vehicle had been insured with the insurance company and the insurance is valid upto 30.08.2011. At the time of accident i.e., 03.03.2011 the insurance policy was in force. Therefore, the Insurance Company is liable to pay an adequate compensation to the claimant. At the time of accident, the claimant's age was 25 years and he was working as a Clerk, attached to a private transport corporation, and he was earning a sum of Rs.10,000/- per month. After the accident, he is unable to do his avocation as a clerk, as he is in a vegetative condition and reclines horizontally always. Till now, he is not able to move from one place to another place without others support. Therefore, a permanent attender is required to assist him through out his life time.

10. The highly competent counsel Mr.S.Udayabhanu representing on behalf of Mr.K.Varadhakamaraj further submits that the claimant had undergone treatment at Government Hospital, Chennai for more than 34 days as an inpatient. During medical treatment period, he had undergone a surgical operation and a steel plate was fixed in the operated area. Thereafter, the claimant underwent treatment at Government Institution of Rehabilitation Medicine, K.K.Nagar, for more than two months, as an inpatient. Besides, the claimant has also underwent treatment as outpatient as of now. The doctor has assessed the disability at 100%. Therefore, the claimant is unable to appear before the Tribunal for adducing evidence. Hence, an Advocate Commissioner, one Mr.S.Manivannan had been appointed for recording his evidence, and he had recorded the evidence and submitted his report on 08.10.2013 before the Tribunal which clearly proves that from the date of accident, till now, the claimant had been bed-ridden since his entire physical system has collapsed. Therefore, the multiplier method adopted by the Tribunal is appropriate. The highly competent counsel further submits that there is absolutely no possibility for the claimant to marry since his entire physical condition had been totally destroyed and as such, he is unable to lead a marital life. As such, the claimant is entitled to receive an adequate compensation under the head of loss of marital life. Hence, the highly competent counsel entreats the Court to grant an adequate compensation to the claimant.

11. 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:-

(i) The doctor has assessed the disability sustained by the claimant as 100%. The same was proved through the appointment of the learned Advocate Commissioner viz., one Mr.Manivannan, to record the evidence of the claimant at his residence. Accordingly, the learned counsel had recorded the claimant's evidence on 08.10.2013, which reveals that the claimant has been bed-ridden. Even after a period of around three years, the claimant has been bed-ridden. As such, it is evident that the claimant is in a vegetative condition. Therefore, multiplier method adopted by the Tribunal in granting compensation under the head of permanent disability is appropriate in the instant case.

(ii) This Court is of the further view that the claimant always requires physical support from others to lead his life. Therefore, this Court is inclined to grant an additional compensation of a sum of Rs.3 lakhs for attender charges, which is appropriate in the instant case.

(iii) This Court is of the further view that in the life of a human being, marital life also is of paramount importance and in the instant case, the claimant's total physical condition has collapsed. In support of this condition, the practicing doctor also issued substantial medical certificates and adduced evidence. Therefore, the claimant is entitled to receive an adequate compensation under the head of loss of marital life. Hence, this Court is inclined to grant a sum of Rs.4 lakhs as additional compensation under the above said head. The Tribunal had assessed mode of compensation under the various grounds which are appropriate. Hence, this Court grants an additional compensation of a sum of Rs.7,00,000/- (Rupees Seven Lakhs only). This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation.

(iv) At the time of admission, this Court had directed the Insurance Company to deposit the entire initial compensation amount with accrued interest thereon, within a period of four weeks. After such deposit being made, the claimant was permitted to withdraw a consolidated sum of Rs.5,00,000/-. Now, this Court directs the learned II Small Causes Court Judge to issue pay order in the name of the claimant for the balance amount now lying in the credit of M.C.O.P.No.1331 of 2011, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, within a period of 4 weeks through special messenger and deliver the same to the claimant after he is identified by his counsel Mr.S.Udayabhanu.

12. This Court directs the United India Insurance Company to pay the said additional compensation amount with

interest thereon, by way of pay order in the name of the claimant, within a period of six weeks from the date of receipt of this order, at his residence, after the claimant has been identified by the learned counsel Mr.S.Udayabhanu. To that effect, the Insurance Company has to file a Memo before the IInd Small Causes Court, Chennai. The learned Judge has to record the same.

13. In the result, the appeal in C.M.A.No.993 of 2015 is dismissed and the appeal in C.M.A.No.364 of 2015 is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The IInd Small Causes Court,
The Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section, High court Madras.

+2 cc to Mr.S.Arunkumar, Advocate (sr.54613, 54611)

+1 cc to Mr.K.Varadhakamaraj, Advocate (sr.54669)

Pre Delivery Judgment made in
C.M.A.Nos.993 of 2015 and 364 of 2015

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cp 2/11/2015

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