

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.791 of 2014

and

M.P.No.1 of 2014

Suguna Appellant /Petitioner

vs.

1.Ramesh

2.M/s.Bajaj Allianz General
Insurance Co., Ltd.,
Regional Office, Prince Towers
IV Floor, 25/26, College Road
Nungambakkam, Chennai-600 006 ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 12.11.2013, made in M.C.O.P.No.336 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Judge, Gudiyattam.

For Appellant : Mr.V.Parivallal

For Respondents: Mr.S.Manohar for R2

J U D G M E N T

The appellant / claimant has preferred the present appeal against the Judgment and Decree, dated 12.11.2013, made in M.C.O.P.No.336 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Judge, Gudiyattam.

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

On 01.10.2010, at about 04.45 p.m., when the claimant was proceeding to cross the Chennai-Bengaluru National Highways Road in Perumugai Village, a Car bearing registration No.TN02 AK2746, driven by its driver in a rash and negligent manner, dashed against her. As a result, she had sustained grievous injuries. Hence, she 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 offending vehicle had not been insured with them. The accident had not been committed by the driver of the Car. Actually, the claimant crossed the road in a careless manner and as such the accident had occurred. The Insurance Company denied the nature of injuries sustained by the claimant, medical treatment etc.

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 twelve documents were marked. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after scrutinizing the oral and documentary evidence, awarded a sum of Rs.1,02,288/- as compensation together with interest at the rate of 7.5% per annum.

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

7. The highly competent counsel Mr.V.Parivallal appearing for the appellant / claimant submitted that the driver of the offending vehicle had committed the said accident in a rash and negligent manner and hence a criminal case has been levelled against him by Sathuvacheri Police Station. The offending vehicle had been insured with the second respondent Insurance Company. The claimant, in support of her claim, had marked Exs.P1 to P12. As such, negligence and liability had been proved against the driver of the offending vehicle and its insurer respectively. The appellant / claimant was involved in brick kiln works as a Coolie. She had sustained multiple bone fracture injuries on her left leg, right shoulder, right hand wrist and fracture of fingers. The Doctor had assessed the disability as 45%, but the Tribunal had not granted adequate compensation under the relevant heads.

8. The very competent counsel Mr.S.Manohar appearing for the Insurance Company submitted that the appellant / claimant crossed the road in a careless manner and as a result the accident occurred. The claimant had sustained simple injuries, but the practicing Doctor assessed the disability at 45% in an arbitrary manner, however, the Tribunal had granted an adequate compensation under the relevant heads. Therefore, the learned counsel prayed this Court to dismiss the appeal.

9. Per contra, the learned counsel Mr.V.Parivallal submitted that the appellant / claimant sustained injuries to the brain. After the accident, she is unable to pursue her avocation as a Coolie in the brick kiln works and she is unable to walk and squat normally.

10. 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 is a labourer and she has sustained multiple bone fracture injuries and to the brain injuries. The Doctor had aptly assessed the disability as 45%. Hence, this Court is inclined to re-assess the compensation as under:

- i. Rs.90,000/- under the head of disability,
- ii. Rs.25,000/- 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.30,000/- under the head of loss of earning during the medical treatment period,
- vii. Rs.27,288/- under the head of medical expenses,
- viii. Rs.40,000/- under the head of loss of amenities,

Accordingly, in total, this Court grants a sum of Rs.2,42,288/- as appropriate compensation to the appellant / claimant. After deducting the initial compensation of Rs.1,02,288/-, this Court grants a sum of Rs.1,40,000/-. 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.

11. 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.336 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Judge, Gudiyattam, 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.

12. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and Decree, dated 12.11.2013, made in M.C.O.P.No.336 of 2010, on the file of the Motor

Accident Claims Tribunal, Sub Judge, Gudiyattam, is modified as stated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

To:

1.The Sub Judge,
Motor Accident Claims Tribunal,
Gudiyattam.

2.The Section Officer,
VR Section,
High Court Madras.

+1cc to Mr.S.Manohar, Advocate sr.62096

PRE-DELIVERY ORDER
IN
C.M.A.No.791 of 2014
and
M.P.No.1 of 2014

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srg 14/12/2015

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