

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.114 of 2012
and
C.M.A.No.266 of 2012
and
M.P.No.1 of 2012

C.M.A.No.114 of 2012

R.Palani .. Appellant/Petitioner.

vs

1. V.S.Sai Narayanan
(R1 was set exparte in the trial Court)

2. The New India Assurance Co. Ltd.,
No.45, Moore Street, 5th Floor,
Chennai - 600 001. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 29.06.2011 made in M.A.C.T.O.P.No.2166 of 2010, on the file of the IV Judge, Motor Accidents Claims Tribunal (Small Causes Court) Chennai.

For Appellant : Mr.C.Munusamy for C & K Law Firm

For Respondents: Mr.J.Chandran (for R2)
R1 - Exparte

C.M.A.No.266 of 2012

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 1. .. Appellant/II Respondent

vs

1.R.Palani

2.V.S.Sai Narayanan ..Respondents/Petitioner/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 29.06.2011 made in M.A.C.T.O.P.No.2166 of 2010, on the file of the IV Judge, Motor Accidents Claims Tribunal (Small Causes Court) Chennai.

For Appellant : Mr.J.Chandran
For Respondents: Mr.C.Munusamy (for R1)
for M/s.C and K Law Firm
R2 - Exparte

JUDGMENT

The claimant submits that on 06.05.2010, at about 10.30 p.m., when he attempted to board the bus bearing Registration No.TN-21-AB-3747, in front on the M.M.Nagar Main Road, Chennai, the driver had driven the bus in a rash and negligent manner without noticing the petitioner and as a result, he had fallen down and sustained injuries. Hence, the claimant has filed the claim against the owner and insurer and claimed a sum of Rs.6,00,000/- as compensation.

2.The Insurance Company has filed a counter statement. The respondent stated that the accident had not happened and that with the collusion of the first respondent, the criminal case has been registered. Further, at the time of accident, the driver of the bus did not possess valid driving licence. Further, the respondent denied age, income and occupation of claimant.

3.After considering the averments of both parties, the Tribunal had framed necessary issues and after recording the evidence of the claimant's side and on scrutinising the exhibits 1 to 10 marked by the claimant, the Tribunal had awarded a sum of Rs.2,45,000/- with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed an appeal in CMA.No.266 of 2012. Not being satisfied with the quantum of compensation, the claimant has filed an appeal in CMA.No.114 of 2012, for additional compensation.

4.The highly competent counsel Mr.J.Chandran, appearing for the Insurance Company submits that the claimant had committed negligence by attempting to board the running bus and as such the claimant is not entitled to receive compensation. Further, the claimant has sustained simple injuries but the Doctor has certified that the claimant had sustained 65% disability. The Tribunal had awarded compensation of a sum of Rs.1,20,000/- under the head of disability. Besides the Tribunal had granted a sum of Rs.49,000/- under the head of loss of income, which is not appropriate. Hence, the learned counsel entreats the Court to set aside the award.

5.The highly competent counsel Mr.C.Munusamy submits that the Tribunal had framed necessary issues and decided the case against the Insurance Company. The negligence had been committed by the driver of the offending vehicle and the vehicle was insured with the Insurance Company. The claimant had undergone treatment for around 3 months, as inpatient at Stanley Hospital. Further, the claimant had sustained multiple bone fracture injuries. Hence, the Doctor had assessed the disability at 65%. The Tribunal had not granted adequate compensation under the relevant heads.

6.On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, it is seen that the claimant had sustained multiple bone fracture injuries. Hence, a surgical operation was conducted and steel plate was fixed in the operated area. The Doctor had assessed the disability at 65%. Besides, the exhibit P2 discloses that the claimant had undergone treatment as inpatient at Stanley Hospital for around 3 months. Hence, this Court is inclined to grant an additional compensation as follows:-

Rs.1,30,000/- under the head of disability; Rs.25,000/- for pain and suffering; Rs.10,000/- for transport; Rs.10,000/- for attender charges; Rs.5,000/- for medical expenses; Rs.10,000/- for nutrition; Rs.25,000/- for loss of earning during medical treatment period; Rs.1,00,000/- under the head of loss of amenities and loss of comfort, since the claimant's right tibia bones had been fractured and 8 holed steel plate had been fixed permanently. In total, this Court awards Rs.3,15,000/-. After deducting initial compensation of a sum of Rs.2.45,000/-, this Court grants a sum of Rs.70,000/- as additional compensation. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of deposit of compensation.

7.This Court further directs the Insurance Company to deposit the additional compensation amount before the trial Court, within a period of six weeks from the date of receipt of this order. After such deposit has been made, it is open to the claimant to withdraw the said amount, after filing a memo, along with a copy of this order.

8.In the result, the appeal in CMA.No.114 of 2012 is partly allowed, which has been filed by the claimant and CMA.No.266 of 2012 filed by the Insurance Company is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

vs

-s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
V Court of Small Causes Court,
Chennai.

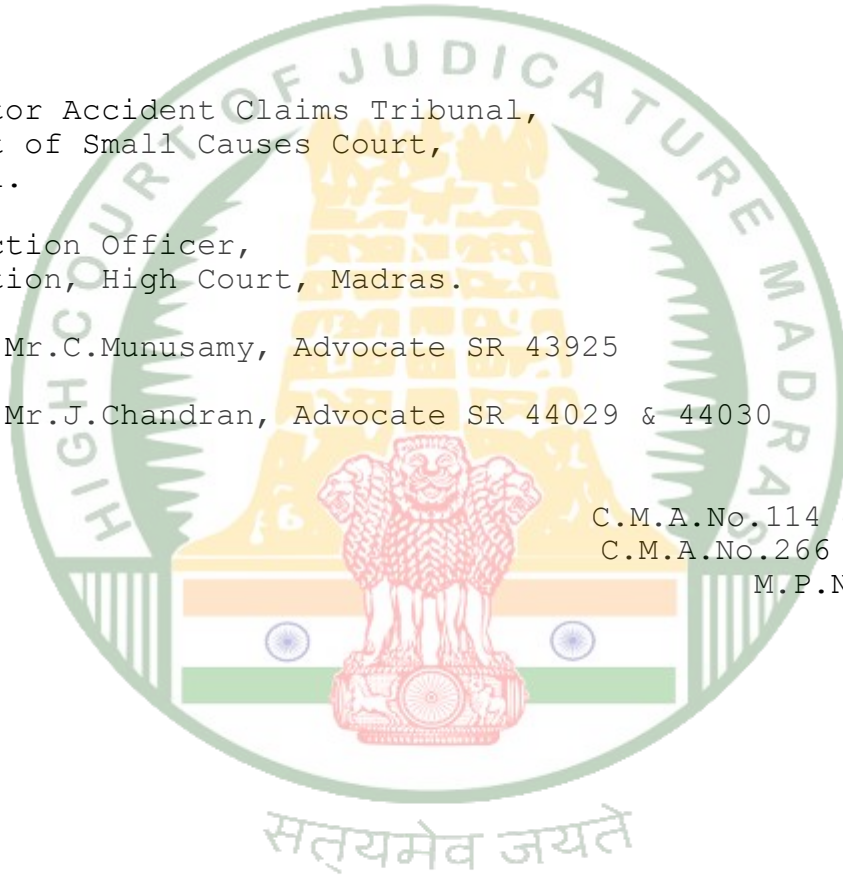
2. The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.C.Munusamy, Advocate SR 43925

+ 1 cc to Mr.J.Chandran, Advocate SR 44029 & 44030

gj (co)
prk29/12

C.M.A.No.114 of 2012 and
C.M.A.No.266 of 2012 and
M.P.No.1 of 2012



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