

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2015

CORAM

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

C.M.A.No.1268 of 2013

N.Chandrasekaran

..

Appellant/Claimant

vs

1.R.Iyappan

2.S.Sellamuthu

3.The United India Insurance Co. Ltd.,  
Branch Office III,  
137, T.Cherry Road,  
Salem 636 001.

...

Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 18.08.2008 passed in M.C.O.P.No.120 of 2004 on the file of the Motor Accidents Claims Tribunal (Sub Court), Bhavani for enhancement of the compensation.

For Appellant : Mr.K.Govi Ganesan

For Respondents: Mr.T.Ravichandran (for R3)  
No Appearance (for R1 & R2)

JUDGMENT

On 27.10.2003, at about 3.45 p.m., when the claimant was riding his motorcycle bearing Registration No.TN-36-F-1018, on the Bhavani Main road, the bus bearing Registration No.TN-36-P-7799, coming in the opposite direction dashed against him. As a result, he had sustained injuries. Hence, the claim petition had been levelled against the owner and insurer of the bus and a compensation of Rs.10,00,000/- was claimed.

2.The Insurance Company has filed a counter statement and opposed the claim petition. The respondent denied the occurrence of the said accident. Further, the contentions regarding age, income and occupation of claimant was denied.

3.After recording the averments of both parties, the Tribunal had framed two issues. On the side of the claimant, three witnesses were examined and 19 documents were marked. On the side of the

respondents, no evidence and no exhibits had been marked. The Tribunal, after recording the evidence of the claimant and perusing the exhibits marked had awarded a sum of Rs.2,08,200/- with interest at the rate of 6% per annum. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal.

4.The highly competent counsel Mr.K.Govi Ganesan appearing for the claimant submits that the claimant had sustained multiple bone fracture injuries and he has been hospitalised as an inpatient at Lotus Hospital, wherein a surgical operation had been conducted and steel rod had been fixed in the operated area. Besides two toes were removed from the right foot of the claimant. The claimant had spent a sum of Rs.1,70,700/- towards medical expenses. The Doctor had assessed the disability at 38%. The claimant is a Constable attached to the Reserve Police Wing. The Tribunal had not granted adequate compensation under the relevant heads. Hence, the very competent counsel entreats the Court to grant additional compensation.

5.The very competent counsel Mr.T.Ravichandran appearing for the Insurance Company submits that the claimant had sustained simple injuries but the practicing Doctor had assessed the disability at 38% which is on the higher side.

6.Further in the said accident, both vehicles collided head on and as such the accident had occurred and therefore contributory negligence has to be attributed but the Tribunal had not discussed this issue and not given any findings. However, the Tribunal had granted compensation to the claimant under relevant heads.

7.Per contra, the very competent counsel Mr.K.Govi Ganesan submits that the Tribunal had not granted compensation under the heads of attender charges, loss of earning during medical treatment period, loss of amenities and disability.

8.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, this Court is inclined to grant additional compensation as follows:-

Rs.1,70,700/- is awarded towards medical expenses; Rs.76,000/- is awarded towards disability; Rs.25,000/- towards pain and suffering; Rs.5,000/- towards transport; Rs.10,000/- towards attender charges; Rs.10,000/- towards nutrition; Rs.30,000/- towards loss of earning during medical treatment period and Rs.50,000/- towards loss of amenities and disfigurement since the claimant's two toes were removed from his right leg which is permanent in nature. Besides a surgical operation was conducted on his hand and steel plate was fixed in the operated area. In total, this Court awards Rs.3,76,700/- as compensation. After subtracting the initial compensation of a sum of Rs.2,08,200/- this Court awards Rs.1,68,500/- as additional compensation. But the claimant has sought a sum of Rs.1,00,000/- as additional compensation.

Accordingly, this Court allows the above appeal and directs the third respondent herein to deposit a sum of Rs.1,00,000/- with interest at the rate of 7.5% per annum from the date of claim petition till date of payment of compensation. This Court further directs the Insurance company to deposit the compensation within a period of six weeks from the date of receipt of this order. After such deposit being made, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon, after filing a memo along with a copy of this order.

9. In the result, the above appeal is allowed. Consequently, the Fair and Decretal order passed in M.C.O.P.No.120 of 2004, on the file of the Motor Accident Claims Tribunal/ Sub Court, Bhavani, dated 18.08.2008, is modified. No costs.

vs

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal  
Subordinate Court,  
Bhavani.

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

+ 2 ccs to Mr.K.Govi Ganesan, Advocate SR 46592, 42682

+ 1 cc to Mr.T.Ravichandran, Advocate SR 42349

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