

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2015

CORAM

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

C.M.A.No.1279 of 2013

and

M.P.No.1 of 2013

Order Reserved on 07.09.2015 Judgment Pronounced on 09.09.2015

S.Prashanth ...Appellant/Petitioner

vs

1.Noorjaghan

2.The Oriental Insurance Co. Ltd.,
No.81-C, K.R.C. Complex,
Chennai Salai,
Krishnagiri.

...Respondents/Respondents

(1st respondent set exparte before the
Court below. Hence notice may be
dispense with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the decree and judgment dated
06.02.2013, made in M.C.O.P.No.346 of 2011 on the file of the Motor
Accident Claims Tribunal, (Chief Judicial Magistrate Court)
Dharmapuri.

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.S.Jeyaram (for R2)

R1 - Ex-parte

JUDGMENT

On 14.01.2011, at about 12.45 p.m., when the claimant was
proceeding on his TVS Super XL bearing Registration No.TN-24-F-7907,
along with pillion rider, on the Kattupatti main road, the bus
bearing Registration No.TN-29-E-5144, driven by its driver in a rash
and negligent manner, dashed against the TVS Super XL. As a result,
the claimant sustained injuries. Hence, he had levelled the claim
against the owner and insurer of the bus.

2.The Insurance Company has filed a counter statement and opposed the claim. The respondent submits that the claimant and two others pillion riders had travelled on a TVS Super XL, and due to this, the claimant had lost his control and he dashed it against the bus. The driver of the bus did not possess valid driving licence and the bus was not covered with valid documents. The rider of the TVS Super XL had not possessed valid driving licence. The owner and insurer of the TVS Super XL are also necessary parties but they have not been impleaded as necessary parties. The averments regarding age, income and occupation of claimant was denied.

3.After considering the averments of both parties, the Tribunal had framed two issues. On the side of the claimant, two witnesses were examined and 8 documents were marked. On the side of the Insurance Company, no evidence, no documentary proof. After considering the evidence of the witnesses and on perusing the exhibits, the Tribunal had granted a sum of Rs.1,60,000/- 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 for additional compensation.

4.The learned counsel Mr.C.Prabakaran appearing for the claimant submits that the claimant's age was 20 years and he was earning Rs.10,000/- per month. The accident had been committed by the driver of the bus and hence the F.I.R. has been registered against him. The said bus has been insured with the Insurance Company. As per medical evidence, the claimant's right thigh bone had been fractured and a surgical operation was conducted and the fractured bone is malunited. The Doctor had assessed the disability at 45%. The tribunal had not granted an adequate compensation.

5.The learned counsel Mr.S.Jeyaram, appearing for the Insurance Company submits that the claimant was the rider of the TVS Super XL and he had ridden it along with two pillion riders, at high speed due to which he had lost his balance and dashed it against the bus.

6.The claimant had sustained simple injuries but the Doctor had assessed the disability at 45% which is on the higher side. In the instant case, the owner and insurer of the TVS Super XL are necessary parties, but they have not been impleaded as parties. Therefore, the impugned award is not suitable for execution since there is a lacuna. However, the Tribunal had granted adequate compensation to the claimant.

7.On considering the facts and circumstances of the case and arguments advanced by the very competent counsels on either side and on perusing the typed set of papers, this Court is of the view that the claimant had sustained 45% disability and his right thigh bone was fractured and hence a surgical operation was conducted. The

Tribunal had not granted adequate compensation under the relevant heads. Hence, this Court is inclined to grant additional compensation as follows:

Rs.10,000/- towards disability; Rs.15,000/- for pain and suffering; Rs.5,000/- for transport; Rs.5,000/- for nutrition; Rs.8,000/- towards attender charges; Rs.40,000/- towards loss of amenities and loss of comfort since the claimant's right thigh bone was fractured and the same was malunited even after surgical operations which is permanent in nature. In total, this Court awards Rs.83,000/- 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 payment of compensation.

8.This Court directs the Insurance Company to deposit the said compensation amount with interest, 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 said amount after filing a memo along with a copy of this order.

9.In the result, the above appeal is partly allowed. Consequently, the Decree and Judgment passed in M.C.O.P.No.346 of 2011, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court) Dharmapuri dated 06.02.2013, is modified. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CSII)
dt:9/10/2015

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Dharmapuri.

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

+1 cc to Mr.S.Jayaram vide sr.49082

+1 cc to Mr.C.Prabakaran,Advocate(sr.42551)2/11/2015

C.M.A.No.1279 of 2013
and

M.P.No.1 of 2013

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