

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.1287 of 2013

Order Reserved on 07.09.2015

Judgment Pronounced on 09.09.2015

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Appellant/Petitioner

vs

1.M/s.Shire Dhandapani Bus service,
No.2/21 Bazeer Street,
Pennagaram town & taluk,
Dharmapuri District.

2.Oriental Insurance Co. Ltd.,
Represented by its Manager,
3-L, Siddaveerappa Chatty street,
Dharmapuri District

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Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment order dated 01.12.2011 passed in M.C.O.P.No.109 of 2011 on the file of Motor Accident Claims Tribunal cum Additional District Judge, Dharmapuri.

For Appellant : Mr.M.Selvam

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

R1 - No Appearance

JUDGMENT

On 20.09.2010, at about 7.30 p.m., when the claimant was proceeding on his bicycle on the Dharmapuri main road, the bus bearing Registration No.TN-29-AE-2369, coming in the opposite direction and driven at a high speed and negligent manner dashed against him. As a result, he had sustained multiple bone fracture injuries. Hence, the claim petition had been levelled against the owner and insurer of the bus.

2.The Insurance Company had filed a counter and opposed the claim. The respondent had denied the occurrence of the accident. The claimant had ridden his bicycle in a zig zag manner due to eye defect and had suddenly crossed the road and dashed the bicycle against the bus. The bus had not been covered under valid documents and the driver of the bus had not possessed valid driving licence. Besides, the averments regarding age, income, occupation of the 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 13 documents were marked. On the side of the respondent, no witnesses, no documentary proof. After considering the evidence of the witnesses and on perusing the exhibits, the Tribunal had granted a sum of Rs.3,77,110/- 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.M.Selvam appearing for the claimant submits that the claimant had sustained multiple bone fracture injuries and his left leg had been completely ruptured. The claimant had undergone 5 surgical operations. The fractured bones were malunited. The Doctor had certified that the claimant had sustained 70% disability. Further, the claimant is aged about 45 years and he had been involved in agricultural operations as a coolie.

5.The learned counsel Mr.S.Arunkumar appearing for the Insurance Company submits that the Doctor had assessed the disability at 70% which is on the higher side. However, the Tribunal had granted adequate compensation under the relevant heads. The Tribunal had adopted multiplier method and awarded compensation under the head of loss of earning, which is not appropriate in the instant case.

6.However, the Tribunal had granted an adequate compensation to the claimant.

7.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 the claimant had sustained 70% disability and his left leg had been completely ruptured. The claimant had undergone 5 surgical operations and the fractured bones were malunited. It is also seen that the claimant is an agricultural coolie and he is not able to do the same occupation after the accident. Hence, this Court is inclined to grant additional compensation as follows:-

Rs.1,00,000/- towards disability; Rs.25,000/- towards pain and suffering; Rs.10,000/- towards transport; Rs.10,000/- towards nutrition; Rs.10,000/- towards attender charges; Rs.30,000/- towards loss of earning during medical treatment period and Rs.50,000/- for

loss of amenities and discomfort and disfigurement, since the claimant's left leg had been completely damaged. In total, this Court awards Rs.2,35,000/- as additional compensation, the same will carry interest at the rate of 7.5% per annum from the date of claim petition till date of payment of compensation.

8.This Court directs the Insurance Company to deposit the additional 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 order passed in M.C.O.P.No.109 of 2011, on the file of the Motor Accident Claims Tribunal cum Additional District Judge, Dharmapuri dated 01.12.2011, is modified. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vs

To

1.The Motor Accident Claims Tribunal cum
Additional District Judge,
Dharmapuri.

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

+1 cc to Mr.M.Selvam, Advocate, sr.49691
+1 cc to Mr.S.Arunkumar, Advocate, sr.49183

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