

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM

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

C.M.A.No.1738 of 2012
and
Cross Obj.No.49 of 2012

C.M.A.No.1738 of 2012

M/s. United India Insurance Co. Ltd.,
No.139, N.No.50, North Usman Road,
Chennai - 17. ... Appellant/2nd Respondent

Vs

1.E.Selvi ... 1st Respondent/Claimant

2.B.Narayanasami ... 2nd Respondent/1st
Respondent

Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicle Act, 1988, against the Judgment and
Decree passed in M.C.O.P.No.675 of 2011, dated 03.02.2012,
on the file of the Motor Accident Claims Tribunal (Small
Causes Court V Judge) at Chennai District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.P.Chinnaraj (for R1)
R2 - Not Ready Notice

Cross Objection No.49 of 2012

E.Selvi ... Cross Objector

Vs

1. United India Insurance Co. Ltd.,
No.139, N.No.50, North Usman Road,
T.Nagar, Chennai - 600 017.

2. B.Narayanasami. ... Respondents/Respondents
(Ex-parte in the Lower Court)

Cross Objection against appeal in C.M.A.No.1738 of 2012 on the file of this Court against the decree and judgment dated 03.02.2012 in MACT.O.P.No.675 of 2011, on the file of V Judge, Small Causes Court at Chennai and Whereas the notice of the appeal served on the Cross Objector on 27.06.2012. The Cross Objector filed the vakalat on 29.06.2012 and Whereas the above appeal in C.M.A.No.1738 of 2012 is admitted by this Court and the Cross Objector files this Memorandum of Cross Objection under Rule 22 of Order XXXXI of the Civil Procedure Code 1908.

For Cross Objector : Mr.P.Chinnaraj

For Respondents : Mr.J.Chandran (for R1)
R2 - Not Ready Notice

JUDGMENT

On 21.01.2011, at about 8.00 hours, when the petitioner was engaged in Sanitary work at the bridge of Kavankarai, the rider of the motorcycle bearing Registration No.TN-02-AJ-4504, drove it in a rash and negligent manner and dashed against the claimant. As a result, she had sustained injuries. Hence, the claim petition had been filed against the owner and insurer of the offending vehicle.

2.The Insurance Company has filed counter statement and resisted the claim petition. The rider of the motorcycle did not possess valid driving licence. Further, the contentions regarding age, income, occupation, nature of injuries, mode of treatment and disability was denied.

3.On considering the contentions of both parties, the Tribunal had framed necessary issues and after recording evidence of PW1 and PW2 and RW1 and RW2 and also after perusing the exhibits marked by both parties had granted a sum of Rs.70,000/- as compensation with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the appeal. Not being satisfied with the quantum of compensation, the claimant has filed Cross Objection and seeking additional compensation.

4.The highly competent counsel Mr.J.Chandran appearing for the Insurance Company submits that the rider of the motorcycle did not possess valid driving licence and he is the son of the owner of vehicle. As such, the Insurance

Company is not liable to pay any compensation. The same was proved through respondents evidence. Further, the claimant had sustained simple injuries, but the Doctor had assessed the disability at 45% which is on the higher side.

5.The learned counsel Mr.P.Chinnaraj appearing for the claimant submits that the claimant had sustained multiple bone fracture injuries and she had been hospitalised as inpatient as well as outpatient. The practicing Doctor had assessed the disability at 45% since the claimant had sustained grievous injuries on her forehead, left leg, left hip, dislocation of left wrist. After the accident, she is unable to do her work as a sweeper. Hence, the very competent counsel entreats the Court to grant additional compensation.

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, this Court is of the view that the practicing Doctor had assessed the disability at 45% and the certificate of disability had been issued after scrutiny of medical records and verification of physical condition. Hence, this Court is inclined to grant additional compensation as follows:-

Rs.90,000/- is awarded under the head of disability; Rs.20,000/- towards pain and suffering; Rs.5,000/- towards nutrition; Rs.5,000/- towards transport; Rs.5,000/- for attender charges; Rs.6,000/- for medical expenses; Rs.11,000/- for loss of earning during medical treatment period. In total, this Court awards Rs.1,42,000/-. After deducting initial compensation of a sum of Rs.70,000/-, this Court grants an additional compensation of a sum of Rs.72,000/-. This amount will carry interest at the rate of 7.5% per annum.

7.As per the Courts record, it is seen that this Court had directed the Insurance Company to deposit the entire initial compensation with interest. Now, this Court directs the Insurance Company to deposit the additional compensation amount also with interest as per this Court's order 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, consisting of initial compensation as well as additional compensation, with accrued interest thereon, after filing a memo, along with a copy of this order, before the trial Court.

8.In the result, the above appeal filed by the Insurance Company is dismissed and the Cross Objection in Cross Objection No.49 of 2012 filed by the claimant is partly allowed. Consequently, the Judgment and Decree passed in M.C.O.P.No.675 of 2011, on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, dated 03.02.2012, is modified. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Presiding Officer,
Motor Accident Claims Tribunal,
V Court of Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.P.Chinnaraj, Advocate, S.R.No.41744
+1cc to Mr.J.Chandran, Advocate, S.R.No.41783

C.M.A.No.1738 of 2012
and

Cross Obj.No.49 of 2012

KJI (CO)
CA(18/11/2015)

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