

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2455 of 2013

M.Vijayakumar

..Appellant/Claimant

Vs.

1.M.Natesan

2.The New India Insurance Company Ltd.
No.52, Vinay Complex, V.V.Road
Basvangudi, Bangalore-560 004
Karnataka State
(R1 remains ex-parte in the Lower Court)

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment, dated 25.09.2012, made in M.C.O.P.No.307 of 2008, (transferred and renumbered from District Court, Namakkal in M.C.O.P.No.1493 of 2004) on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.Arockia Dass

For Respondents : No Appearance

J U D G M E N T

The appellant / claimant has preferred the present appeal against the judgment and decree, dated 25.09.2012, made in M.C.O.P.No.307 of 2008, on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2. The short facts of the case are as follows:-

On 28.09.2003, at about 08.10 p.m., when the claimant was riding his bicycle on Pallipalayam-Tiruchengode Main Road, a motorcycle bearing registration No.TN34 A5177 came driven by its rider in a rash and negligent manner, dashed against him. As a result, the claimant had sustained grievous injuries. Hence, he filed a claim petition against the rider and insurer of the offending vehicle for compensation.

3. The second respondent/Insurance Company filed a counter affidavit and resisted the claim petition. It was

submitted that the claimant without observing the road traffic rules had suddenly crossed the road and dashed against the motorcycle. The rider of the motorcycle did not possess valid driving licence besides being a minor at the time of accident. The Insurance Company denied the nature of injuries, medical treatment etc.

4. After recording the averments of both parties, the Tribunal had framed three issues. On the side of the claimant, two witnesses were examined and fourteen documents were marked. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after scrutinizing the oral and documentary evidence, awarded a sum of Rs.61,000/- as compensation together with interest at the rate of 7.5% per annum.

6. Not being satisfied with the quantum of compensation, the claimant filed this appeal.

7. The learned counsel for the appellant has submitted that the Insurance Company had resorted to evade and avoid the receipt of the Court notice for the last two years. Hence, the learned counsel made a deep request to dispose of the appeal after scrutinizing the entire typed set of papers.

8. Further, the learned counsel submitted that the claimant aged about 13 years and he was a student at the time of the accident. He was proceeding on his bicycle and at that point of time, the motorcycle came from the opposite direction on Pallipalayam Main Road in a rash and negligent manner and dashed against him. A criminal case had been levelled against the rider of the motorcycle. The said offending vehicle had been insured with the second respondent Insurance Company. Therefore, the first issue, namely, negligent and liability have been proved against the rider of the motorcycle and the Insurance Company respectively. However, the Tribunal had not granted adequate compensation to the claimant since he had sustained serious bone fracture injuries on his head, left rib, left leg and right leg. Further, he had undergone treatment at Government Hospital, Tiruchengode, wherein preliminary treatment had been given and thereafter he had been referred to Senthil Hospital, Erode, for better medical treatment, wherein he had been treated as inpatient for a long time. Now, the claimant's left eye exudes a watery discharge. Hence, he is unable to concentrate on his study effectively. The fractured bones had malunited. After the accident he is unable to take part in sports and other extra-curricular activities.

9. Further, the learned counsel has submitted that the practicing Ortho Doctor had certified that the claimant had sustained 23% disability, after examining him and after

verifying the medical records of the claimant. The Tribunal had not granted compensation under the relevant heads. Supporting his submission, the entire records had been filed by way of typed set of papers. Hence, the learned counsel prayed this Court to assess an adequate compensation on the basis of the relevant records.

10. Considering the factual position of the case and arguments advanced by the learned counsel for the claimants and on perusing the typed set of papers, this Court is of the view that the Tribunal had not granted adequate compensation under the relevant heads, since the claimant had sustained multiple bone fracture injuries. Further, he had established the liability against the Insurance Company. Therefore, this Court assesses the compensation as follows:

- i. Rs.46,000/- under the head of disability,
- ii. Rs.20,000/- under the head of pain and suffering,
- iii. Rs.10,000/- under the head of transport expenses,
- iv. Rs.10,000/- under the head of nutrition,
- v. Rs.10,000/- under the head of attender charges,
- vi. Rs.42,000/- under the head of medical expenses,
- vii. Rs.50,000/- under the head of loss of amenities, since the claimant's had sustained bone fracture injuries on his head and on his rib, left leg and right leg. Due to the impact of the injury on the left side of his head, the left eye exudes a watery substance.

Accordingly, in total, this Court grants a sum of Rs.1,88,000/- as appropriate compensation. After deducting the initial compensation of Rs.61,000/-, this Court grants a sum of Rs.1,27,000/-. The said amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit of the amount before the Tribunal.

11. This Court directs the second respondent / Insurance Company to deposit the entire enhanced award amount with interest as mentioned above, and costs, to the credit of M.C.O.P.No.307 of 2008, on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchengode, within a period of six weeks from the date of receipt of a copy of this Judgment.

After such a deposit being made, it is open to the claimant to withdraw the entire award amount after filing a memo along with a copy of this Judgment.

12. In the result, this civil miscellaneous appeal is allowed and the Judgment and Decree, dated 25.09.2012, made in M.C.O.P.No.307 of 2008, on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode, is modified. No costs.

krk

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

COPY TO:- The Section Officer, V.R.Section,
High Court, Madras.

KR/14/3/16

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