

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3786 of 2012

Ganesh Prabhu

... Appellant/Claimant

Vs.

1.M.Subbaitha Beevi

2.The New Assurance Company Limited,
Motot III Party Claims Office,
No.45, Moore Street,
Chennai - 600 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.3909 of 2001, dated 08.08.2003, on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant : M/s.J.Mahalingam

For Respondents : Mr.S.Elveera Ravindran for R2
Ex-parte for R1

J U D G M E N T

The short facts of the case are as follows:-

On 07.11.1999, at about 04.30 p.m., when the petitioner was travelling as a passenger in an Auto-Rickshaw bearing registration No.TN-04Z-2944, on the EVR Salai, the driver of the auto had driven in a rash and negligent manner and at a high speed due to which the vehicle had capsized. The claimant had sustained grievous injuries. Hence, the claim petition had been levelled against the owner and insurer of the auto.

2. The Insurance Company had filed a counter statement and resisted the claim petition. The Auto-rickshaw had not been covered with valid Insurance policy and the driver of the auto had not possessed valid driving licence. Further, the respondents denied the occurrence of the said accident. The contentions

regarding age, income, nature of injuries were also denied. It was stated that the claim amount is on the higher side.

3. After recording the averments of both sides, the Tribunal had framed three issues. On the side of the claimant, two witnesses were examined and 15 documents were marked. On the side of the Insurance Company, no evidence, no exhibits. After recording the evidence of the claimants and on perusing the exhibit marked by him, the Tribunal had awarded a sum of Rs.59,000/- 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 and sought additional compensation.

4. The highly competent counsel Mr.J.Mahalingam, appearing for the appellant submits that the F.I.R has been registered against the driver of the offending vehicle and the said vehicle has been insured with the Insurance Company. The claimant had sustained multiple bone fracture injuries and he had undergone treatment at Government Hospital, Chennai, and at Rex hospital and also Isbella Hospital, wherein he had undergone medical treatment as inpatient as well as outpatient. The practicing Doctor had assessed the disability at 40%. The claimants two bones in left leg were fractured and a surgical operation was conducted and a steel plate was fixed in the operated area. Further, the claimant had spent huge amount towards medical expenses. Further, the claimant had sustained bone fracture injuries all over his body. Hence, the very competent counsel entreats the Court to grant adequate compensation.

5. The highly competent counsel, Mr.S.Elveera Ravindran appearing for the Insurance Company submits that at the time of accident, the driver of the vehicle did not possess valid driving licence and the vehicle had not been insured with the Insurance Company. The (Ortho) Doctor had assessed the disability at 40% which is on the higher side. The claimant had undergone treatment for a period of only eleven days as inpatient. However, considering all aspects, the Tribunal had granted adequate compensation. As such, the above appeal is not maintainable.

6. 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 40% disability and he had undergone surgical operation to set right bone fractures. Further, a criminal case has been registered against the driver of the offending vehicle and the same had been insured with the Insurance Company. Hence, this Court is inclined to grant adequate compensation to the claimant as follows:

Rs.80,000/- towards disability;
Rs.15,000/- towards pain and suffering;
Rs.5,000/- towards nutrition;
Rs.5,000/- towards medical expenses;
Rs.5,000/- towards attender charges;
Rs.5,000/- towards transport expenses;
Rs.15,000/- towards loss of earning during medical treatment period;
Rs.25,000/- towards loss of amenities and loss of comfort

In total, this Court awards Rs.1,55,000/- as compensation. After deducting initial compensation of a sum of Rs.59,000/-, this Court awards Rs.96,000/- 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. This Court directs the Insurance Company to deposit the said additional compensation amount together with interest within a period of six weeks from the date receipt of this order, before the Trial Court.

7. After such deposit being made, it is open to the claimants to withdraw the entire compensation amount with interest thereon, after filing a memo, along with a copy of this order. Hence, the above appeal is partly allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ub

To

1.The V Judge.
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.J.Mahalingam, Advocate, S.R.No.48724
+lcc to Mr.S.Elveera Ravindran, Advocate, S.R.No.48800

C.M.A.No.3786 of 2012

KJI (CO)
CA(14/10/2015)