

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.434 of 2012

M.N.Dinakaran

...Petitioner/Appellant

Vs.

1. S.Shanmugam
 2. The National Insurance Company Limited,
Rep. by its Manager,
Bye-Pass Road, Dharmapuri.
 3. P.Sundar
 4. Venkatappa
 5. The Legal Manager,
ICICI Lombard General Insurance Company Limited,
Rep. by its Manager,
No.44/3, 2nd Floor, Cowly Brown Road,
R.S.Puram, Coimbatore. ...Respondents/Respondents
- (R1, R3 and R4 exparte in lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set-aside the judgment and decree dated 16.06.2011 made in M.C.O.P.No.146 of 2009, on the file of Motor Accidents Claims Tribunal, Additional District (FTC) Judge, Dharmapuri.

For Appellant : Mr.M.Selvam

For Respondents : Mr.G.Udayasankar for R2
R1, R3 and R4 (Exparte)
No appearance for R5

J U D G M E N T

The short facts of the case are as follows:-

On 28.06.2007, when the claimant was travelling in the bus bearing registration No.TN-29-AA-9999 on the Krishnagiri Main Road and while the bus was passing near the Krishnagiri Main Road, the driver of the bus, without noticing

the red signal at the Traffic Spot, drove the bus in a rash and negligent manner and dashed against the lorry. As a result, the claimant had sustained injuries. Hence, the claim petition had been levelled against the owner and insurance company of bus and lorry respectively and compensation of a sum of Rs.15,00,000/- was claimed.

2. The National Insurance Company / second respondent had filed a counter statement and resisted the claim petition. It was submitted that the claimant had sustained only simple injuries and that the bus was not covered by valid documents. It was also submitted that the claim was excessive.

3. The ICICI Lombard General Insurance Company Limited / fifth respondent had also filed a counter statement and submitted that the lorry was proceeding after getting the green signal at the traffic spot and at that point of time, the bus driver had violated the traffic rules and dashed against the lorry. Therefore, this Insurance Company is not liable to pay compensation.

4. After recording the averments of parties, the Tribunal had framed three issues. On the side of the claimant, three witnesses were examined and 16 documents were marked. On the side of the respondents, no witnesses, no documents. After recording the evidence of witnesses and on scrutiny of the exhibits marked by the claimant, the Tribunal had held the driver of the bus responsible for causing the accident and hence, held the first and second respondents liable to pay compensation to the claimant. The Tribunal awarded a sum of Rs.1,11,000/- with interest at the rate of 7.5% per annum.

5. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal for an additional compensation.

6. The learned counsel Mr.M.Selvam appearing for the appellant / claimant submits that the claimant had sustained multiple bone fracture injuries and he had undergone medical treatment for about four months as an inpatient as well as outpatient. The claimant has sustained fracture transverse process of L1, L2, L3 and L4 vertebrae bones and this is permanent in nature. The claimant is a leading practicing lawyer at Krishnagiri Bar. After the accident, he has difficulty in walking and limps while moving around and is also unable to argue his cases in an open Court. As a result, his earning capacity has been totally affected. The

learned counsel further submits that the Tribunal had not granted an adequate compensation to the claimant since he has sustained multiple debilitating injuries on his left foot and on his right leg knee and on his neck etc. Further, the Tribunal had not granted compensation under the relevant heads.

7. The learned counsel Mr.G.Udayasankar appearing for the second respondent / National Insurance Company submits that the claimant had sustained simple injuries but the doctor had assessed the disability as 40%, which is on the higher side. However, the Tribunal had awarded compensation to the claimants under the various relevant heads. The Tribunal after awarding a sum of Rs.60,000/- under the head of disability had awarded a sum of Rs.30,000/- under the head of injuries which is redundant in the instant case.

8. Per contra, the learned counsel Mr.M.Selvam appearing for the claimant submits that the Tribunal had not granted compensation under the heads of loss of earning during medical treatment period and loss of amenities and also not granted compensation under the head of attender charges.

9. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and also considering the fact that the claimant who is a practicing lawyer is unable to pursue his legal occupation effectively as he has sustained fracture transverse process of L1, L2, L3 and L4 vertebrae bones, the award granted by the Tribunal is on the lower side. Hence, this Court reassesses the compensation as follows:-

Rs.80,000/- is awarded under the head of disability; Rs.50,000/- is awarded under the head of pain and suffering; Rs.15,000/- is awarded under the head of transport; Rs.15,000/- is awarded under the head of nutrition; Rs.15,000/- is awarded under the head of attender charges; Rs.80,000/- is awarded under the head of loss of earning during medical treatment period; Rs.30,000/- is awarded under the head of medical expenses; Rs.4,00,000/- is awarded under the head of loss of amenities due to the fracture sustained in his vertebrae bones, as a result of which, the claimant is unable to do his usual avocation inside the Court effectively. In total, this Court awards Rs.6,85,000/- as compensation. After subtracting the initial compensation of a sum of Rs.1,11,000/-, this Court grants a further sum of Rs.5,74,000/- as additional compensation. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till the date of payment of compensation.

This Court directs the second respondent / National Insurance Company to deposit the additional compensation with interest within a period of six weeks from the date of receipt of a copy of this order before the Tribunal. 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. Accordingly, the above appeal is partly allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

r n s

To

The Additional District (FTC) Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

1 CC to Mr.M.Selvam, Advocate SR.No. 59505

1 CC to Mr.G.Udayasankar, Advocate SR.No. 59782

C.M.A.No.434 of 2012

UG (CO)
PSI (19.11.2015)

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