

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.3223 OF 2001

M.Santhakumar ... Petitioner

Vs.

1.Ayyath Basha

2.Mani

3.National Insurance Co. Ltd.,
Branch Office
78, T.V.S. Street,
Erode - 1.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 02.11.2000 made in I.A.No.312 of 2000 in M.A.C.O.P.No.528 of 1997 on the file of the I Additional District Court, Erode.

For Petitioner : Mr.D.Selvaraju

For Respondent-1 : Dismissed vide Court order
dated 19.10.2012

For Respondent-2 : No appearance

For Respondent-3 : Mr.D.Bhaskaran

ORDER

This Civil Revision Petition is directed against the order dated 02.11.2000 passed in I.A.No.312 of 2000 in M.C.O.P.No.528 of 1997 by the First Additional District Judge cum Chief Judicial Magistrate, Erode.

2.The petitioner filed a claim petition in M.C.O.P.No.528 of 1997 claiming compensation of Rs.1,00,000/- for the injuries sustained in the motor vehicle accident on 16.10.1996. After contest, the Tribunal has arrived at compensation of Rs.1,33,532/-, but awarded Rs.1,00,000/- only holding that the claim was restricted to Rs.1,00,000/-.

3.Thereupon, the petitioner filed an application in I.A.No.312 of 2000 under Section 114 of the Civil Procedure Code to review the order. The Tribunal dismissed the application on 02.11.2000. Aggrieved by the order, the present Civil Revision Petition is filed.

4.Heard Mr.D.Selvaraju, learned counsel for the petitioner and Mr.D.Bhaskaran, learned counsel appearing for the third respondent Insurance Company and perused the materials available on record.

5.The learned counsel for the petitioner has submitted that the Tribunal has to award just compensation and it need not be restricted to the amount claimed in the claim petition. It is further contended that the Tribunal without considering the facts and circumstances of the case, dismissed the application in I.A.No.312 of 2000.

6.Per contra, learned counsel for the third respondent Insurance Company has submitted that though the Tribunal has given opportunity to the petitioner to amend the prayer, due to his negligence, the claim petition was not amended and therefore, there is no illegality in the order of the Tribunal.

7.It is seen from the records that the petitioner had sustained injury in the motor vehicle accident and filed the claim petition. The Tribunal on appreciation of the evidence produced by the claimant has held that the claimant is entitled to Rs.1,33,532/-, however, restricted the award to Rs.1,00,000/-. In the meanwhile, the claimant has filed the application in I.A.No.312 of 2000 seeking amendment of the claim petition for enhancing the claim to Rs.3,00,000/-. The Tribunal dismissed the application.

8.It is settled law that as per the Scheme of the Motor Vehicles Act, the claimant is entitled for just compensation. The Tribunal has to award just compensation irrespective of the amount claimed in the original petition.

9.In view of the error apparent on the face of law, the Tribunal

ought to have allowed the review application. In my view, the order of the Tribunal is not sustainable in law and the claimant is entitled to Rs.1,33,532/-.

10. In fine, the Civil Revision Petition is allowed. No costs. The third respondent Insurance Company is directed to deposit the modified award amount with interest at the rate of 12% per annum from the date of petition till the date of payment less the amount already deposited within a period of six months from the date of receipt of a copy of this order. On such deposit being made, the petitioner is permitted to withdraw the entire amount.

27.01.2015

Index : Yes/No
Internet : Yes/No
TK
To

The First Additional District Judge
cum Chief Judicial Magistrate
Erode.

K.KALYANASUNDARAM, J.

TK

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