

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No. 466 of 2011

N. Dileep @ Dileepkumar .. Appellant/Petitioner

Vs.

1. M/s. Royal College of Engineering
and Technology
ECR, Pooncheri
Mamallapuram - 603 104.
2. M/s. United India Insurance
Co. Ltd.,
No.13-A, Nethaji Road
Cuddalore - 607 001. .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30.01.2010 made in M.C.O.P No. 937 of 2007 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.III), Chennai.

For Appellant : Mr. T.G. Balachandran

For 2nd Respondent : Mr. G. Udaya Sankar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant, challenging the award passed by the Motor Accidents Claims Tribunal (Fast Track Court No.III), Chennai dated 30.01.2010 passed in M.C.O.P. No.937 of 2007, whereby, the Tribunal has awarded a compensation of Rs.1,26,000/-, together with interest at 9% p.a. from the date of the petition till such deposit is made.

2. On 26.01.2007, at about 16.30 hours, while the appellant/claimant was travelling as a pillion rider in a two-wheeler bearing Registration No. TN-20-AE-4710, on the ECR Road near Muttukkadu Boat Club, the 1st respondent bus was coming in the opposite direction, hit the motor cycle, thereby the appellant/claimant sustained grievous injuries. According to the appellant/claimant, the driver of the bus is responsible for the accident and hence, he filed a claim petition before the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), Fast Track Court

No.III, Chennai, claiming compensation to the tune of Rs.3,66,000/- (restricted to Rs.3,00,000/-).

3. In support of the claim, the claimant was examined as P.W.1; Dr.N.Saichandran was examined as P.W.2 and Exs.P-1 to P.10 were marked, the details of which are as follows:

Ex.No.	Details
P1	True Copy of FIR
P2	Conduct Certificate
P3	B. Tech identity card
P4	Discharge summary (25 th to 31 st January 2007)
P5	Discharge summary (24 th to 28 th March 2007)
P6	Medical Bills for a sum of Rs.53,343/-
P7	Pharmacy Bills for Rs. 21,729.47
P8	Prescriptions
P9	X-ray on 01.09.2009
P10	Disability Certificate

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal.

4. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 9% per annum:

Sl.No	Heads	Amount granted by the Tribunal
1	Transport to hospital	Rs. 5,000/-
2	Extra Nourishment	Rs. 5,000/-
3	Damage to clothing & articles	Rs. 1,000/-
4	Cost of purchase of medicines	Rs. 70,000/-
5	Pain and suffering	Rs. 10,000/-
6	Permanent Disability	Rs. 35,000/-
	Total	Rs. 1,26,000/-

5. According to the learned counsel appearing for the appellant/claimant, the claimant, a B.Tech student of Dr.M.G.R. Engineering College, aged 20 years, met with an accident on 25.01.2007 and thereby suffered fracture of femur on right leg, fracture of right knee, fracture of both bones and other multiple injuries and was treated as inpatient at Kaliappa Hospital, Chennai from 25.01.2007 to 31.01.2007 (7 days), plate and screw was fixed on the right leg.

<https://hcservices.hcourtsgov.in/hcservices/> He was treated as inpatient from 24.03.2007 to

25.03.2007 (2 days) to remove the distal locking screw and for manipulation of right knee, femur and patella. In spite of the treatment taken in the hospital, 30 degree movement is restricted. According to the learned counsel, even after two years the movement is restricted. The learned counsel for the appellant/claimant further contended that at the time of accident, the appellant/claimant is 23 years and hence Rs.2000/- per percentage may be considered for disability. He further submitted that no amount has been granted under the heading "loss of amenities" and the amount granted under the other heads is also very low.

6. On the other hand, the learned counsel for the Insurance Company would submit that the appellant/ claimant has failed to prove his age, income etc. Further, the petitioner has also not proved that the vehicle was insured with the 2nd respondent and that the policy was in force, at the time of accident.

7. Based on the above, the learned counsel for the respondents sought for dismissal of the above Civil Miscellaneous Appeal.

8. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The factum that the appellant/claimant is a III year B.Tech student is not in dispute. The claim for compensation by the appellant/ claimant for taking treatment in a private hospital cannot be granted. However, when we analyse the heads under which the compensation is awarded, we are of the view that the compensation under the heads "Disability", "Pain and sufferings" etc. are very low and that compensation under "Loss of amenities", ought to have been awarded. Hence, by holding that the Tribunal has erred in awarding compensation under the above referred headings, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Heads	Award of the Tribunal	Revised Award of this Court
1	Transport to hospital	Rs. 5,000/-	Rs. 20,000/-
2	Extra Nourishment	Rs. 5,000/-	Rs. 30,000/-
3	Damage to clothing & articles	Rs. 1,000/-	Rs. 2,000/-
4	Medical Expenses	Rs. 70,000/-	Rs. 70,000/-
5	Loss of Amenities	-	Rs. 90,000/-
6	Pain and Suffering	Rs. 10,000/-	Rs. 20,000/-
7	Permanent Disability	Rs. 35,000/-	Rs. 35,000/-
8	Future treatment expenses	-	Rs. 33,000/-

Sl. No.	Heads	Award of the Tribunal	Revised Award of this Court
	Total	Rs.1,26,000/-	Rs.3,00,000/-

10. There is no serious objection in respect of the interest granted at 9% per annum, since the accident is of the year 2007.

11. Accordingly, the Civil Miscellaneous Appeal is modified as follows:

(i) The award of the Tribunal is enhanced to Rs.3,00,000/- from Rs.1,26,000/-.

(ii) The interest granted by the Tribunal at 9% per annum is confirmed.

(iii) The 2nd respondent/Insurance Company is directed to deposit the entire award amount as ordered by this Court, to the credit of M.C.O.P.No. 937 of 2007 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.III, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

(v) It is also made clear that the award amount shall be paid to the appellant/claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs.

12. It has been brought to the attention of this Court that in the crossed cheques which are issued to the claimants, it is mentioned as "& Co." instead of "A/c payee". Such practice has to be avoided by all the Trial Courts and crossing should be made in the cheques only with the endorsement "A/c payee" and not with the endorsement "& Co." It is made clear that if any violation of the same is brought to the notice of this Court, appropriate action will be initiated against the erring officials.

13. Registry is directed to send a Circular to all the Courts below dealing with M.C.O.P. cases, directing them to follow the condition stipulated in paragraph No.12, in letter and spirit.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

1.The Judge,
The Motor Accidents Claims Tribunal
Fast Track Court III, Chennai.

2. The Court Manager, High Curt, Madras-104,
(for further steps)

Copy to: The Section Officer, F Section, High Court,
Madras (For necessary action)

+ 1 cc to Mr.G. Udaya Sankar, Advocate SR.12440
+ 1 cc to Mr.T.G. Balachandran, Advocate SR.12432

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RSY(CO)
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