

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.08.2016

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THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.2293 of 2014

Selvam @ Thiruvavuruthelvam

...Appellant

...VS...

1.Veerasingam

2.ICICI Lombard General Insurance Co.Ltd.,
Zenith House, Keshavrao Khade Marg,
Mahalaxmi, Mumbai-400 034

... Respondent

Prayer: Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 24.03.2014 made in M.C.O.P.No.170 of 2013 on the file of the Special Subordinate Judge No.II, Motor Accidents Claims Tribunal, Villupuram.

For Appellant :Mr.C.Munusamy

For R2 :M/s.R.Sreevidya

For R1 :No appearance

JUDGMENT

Having been not satisfied with the award of the Tribunal to the extent of Rs.4,24,035/-, the appellant, being the claimant, has approached this Court, seeking enhancement of compensation as well as on the ground of liability.

2.The alleged accident was taken place on 10.10.2010 at about 6.30p.m near Kanai Ayyanar Koil at Villupuram District involving a TATA AC Van bearing Regn.No.PY 01 AW 5389 (first respondent herein). It is alleged that in the said accident, the petitioner had sustained grievous injuries on all over his body. P.W.2- Dr. Ravindran, while examining the appellant/claimant clinically, had fixed the disability at 60%. However, the Tribunal had reduced the percentage of the disability at 50%.

3. It is revealed from the records that the injured was aged about 40 years at the time of occurrence and keeping in view of the nature of the injuries and based on the evidences available on record, both oral and documentary, the Tribunal had passed an

award of Rs.4,24,035/- under the following heads:-

Towards pain and suffering	Rs. 15,000/-
Towards nutrition	Rs. 5,000/-
Towards loss of income	Rs. 15,000/-
Towards damage to the clothing	Rs. 1,000/-
Towards transport expenses	Rs. 2,000/-
Towards permanent disability	Rs.1,00,000/-
Towards Medical expenses	Rs.2,87,035/-
(Based on Ex.P7&P9 respectively)	
Towards attender charges	Rs. 2,000/-

Total Rs.4,24,035/-

4. Mr.C.Munusamy, learned counsel appearing for the appellant has submitted that the award passed by the Tribunal under the heads of pain and suffering, transportation and attender charges are very low and therefore he has urged this Court to enhance the compensation under those three heads.

5. M/s.R.Sreevidhya, learned counsel appearing for the respondent/Insurance Company has objected to enhance the compensation as suggested by Mr.C.Munusamy, learned counsel for the appellant.

6.Considering the submissions made by both counsels, this Court finds that it may be appropriate to enhance the compensation on the heads of pain and suffering, transportation and attender charges. Accordingly, the award granted by the Tribunal Rs.15,000/- towards pain and suffering is enhanced to Rs.25,000/-. The award under the head of transportation to the extent of Rs.2,000/- is enhanced to Rs.5,000/-. The Tribunal had also awarded a sum of Rs.2000/- towards attender charges, which appears to be very low and hence the same is enhanced to Rs.10,000/-and towards the loss and income, already the Tribunal had awarded Rs.15,000/- which is enhanced to Rs.19,000/- The award passed by the Tribunal to the extent of Rs.4,24,035/- is enhanced to Rs.4,52,035/-

7. M/s.R.Sreevidhya, learned counsel appearing for the second respondent has submitted that with reference to the liability, the Tribunal might be ordered to pay the award amount and be permitted to recover the same from the owner of vehicle by way of execution proceedings without actually filing any suit for recovery of money. Since the driver of the vehicle was not having valid driving license at the time of occurrence, the first respondent being the owner of the vehicle had already violated the policy conditions. Therefore, the Insurance Company had already taken a stand in their counter statement that the liability of the Insurance Company is to be absolved, and the first respondent is to be held responsible to pay the entire

award amount along with interest at the rate of 7.5%. Since the motor Vehicle Act was enacted for the Welfare of the victims of road traffic accident, the owner of the vehicle cannot be forced to mobilize the funds to satisfy the decree and hence, the Insurance Company would be normally placed in a position to pay the award amount to the claimants instead of the owner of the vehicle and at the later stage, the Insurance Company can recover the same from the owner of the vehicle by way of the execution proceedings.

8. Accordingly, in this case also, the Insurance Company (second respondent) is directed to pay the award amount of Rs.4,52,035/- including the enhanced compensation to the appellant/claimants with interest at the rate of 7.5% per annum from the date of claim petition within six weeks from the date of receipt of a copy of this order. Thereafter, the Insurance Company is permitted to recover the same from the owner of the vehicle as aforesaid. On such deposit being made, the appellant is permitted to withdraw the entire award amount along with accrued interest and costs without filing any application seeking permission.

9. Hence, this Civil Miscellaneous Appeal is allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Special Subordinate Judge No.II,
The Motor Accidents Claims Tribunal,
Villupuram.

1 cc to Mr.C.Munusamy, Advocate, sr.43872
1 cc to Mrs.R.Sreevidhya, Advocate, sr.44118

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kra 15.09.2016