

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.581 of 2014

R.Uma .. Appellant/Petitioner

-vs-

1. Maduraiveeran
(R1 set ex parte in lower Court,
hence notice may be dispensed with)
2. National Insurance Co.Ltd.,
No.751, Anna Salai Road
Chennai-6 ... Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 04.01.2013 made in M.C.O.P.No.2660 of 2011 on the file of the Motor Accident Claims Tribunal, (V Judge, Court of Small Causes), Chennai.

For Appellant :: Mr.K.Varadha Kamaraj

For Respondents :: Mr.R.Ravichandran for R2
R1-Ex parte before Tribunal

JUDGMENT

Mrs.R.Uma, the injured claimant, has brought this appeal dissatisfied with the quantum of Rs.20,000/- alone being awarded, as against the claim of Rs.1,00,000/-, by the Motor Accident Claims Tribunal (V Judge, Court of Small Causes), Chennai in M.C.O.P.No.2660 of 2011 dated 4.1.2013, on the ground that on 2.7.2011 at about 9.30 A.M., when she was walking along the Gandhi Irwin Road near Thalamuthu Natarajan building signal towards east to west direction by crossing the road, an auto-rickshaw bearing Registration No.TN 04 AC 6201 coming from north

to south direction, driven by its driver in a rash and negligent manner endangering the public safety, hit her and caused injuries, as a result of which she experienced pain in her left hip and contusion. Based on the X-ray taken at the Rajiv Gandhi Government General Hospital, Chennai showing no bony injury to both hips, she was treated as an out-patient on 2.7.2011 and 21.9.2011 and thereafter she was advised to take conservative treatment. Even the OP chit marked as Ex.P4 issued by the Rajiv Gandhi Government General Hospital, Chennai clearly proved that the appellant sustained injuries in the accident. Therefore, when there was a contusion and pain in her left hip and was treated both in the Government General Hospital and conservatively, the Tribunal ought not to have unreasonably awarded a meagre amount of Rs.20,000/- alone. Adding further, the learned counsel for the appellant submitted that to establish the factum of accident, immediately after the accident took place on 2.7.2011 at about 9.30 A.M., when the offending auto-rickshaw dashed against the pedestrian, a complaint was lodged before the D6 Anna Square Police Station, Chennai against the driver of the auto-rickshaw, which was registered in FIR No.219/T3/2011 for the offence under Section 337 of IPC and Section 184 of the Motor Vehicles Act. Pursuant thereto, after investigation, a charge sheet was also filed against the driver of the auto-rickshaw for the aforesaid offence and the copies of the FIR, charge sheet and rough sketch were also marked as Exs.R3 to R5 on the side of the respondents through R.W.1. Therefore, when the aforesaid documents clearly establish that the driver of the auto-rickshaw bearing Registration No.TN 04 AC 6201 was responsible for the accident coupled with the OP chit, Ex.P4 issued by the Rajiv Gandhi Government General Hospital, Chennai showing that the appellant experienced pain in her left hip and contusion, a reasonable sum should have been awarded by the Tribunal. He also submitted that Dr.J.R.R.Thiagarajan, who was examined as P.W.2, has also assessed the disability at 30% by deposing that due to the contusion in left hip, its movement was restricted. Besides the injured would also find it difficult to bend and do any work. This apart, the injured was doing teacher training course at the time of accident and taking tuition at home, thereby earning a sum of Rs.5,000/- per month. To support this contention, the copy of the identity card, Ex.P7 fee statement, Ex.P8, admission fee receipt, Ex.P9 were also produced. However, the Tribunal, taking a stand that no medical bills were produced, considering the factor that she sustained simple injuries and also not taken treatment as an in-patient, has awarded Rs.20,000/- unreasonably. Therefore a just and reasonable compensation should be awarded, he pleaded.

2. Heard both the learned counsel for the appellant and the second respondent Insurance Company.

3. A perusal of the impugned award clearly shows that the appellant sustained injuries in the accident on 2.7.2011 at about 9.30 A.M., when she was walking along the Gandhi Irwin Road near Thalamuthu Natarajan building signal towards east to west direction being hit by the offending auto-rickshaw bearing Registration No.TN 04 AC 6201. This is supported by the First Information Report, Ex.P1 registered in FIR No.219/T3/2011 on the file of D6 Anna Square Police Station, Chennai for the offence under Section 337 of IPC and Section 184 of the Motor Vehicles Act against the driver of the auto-rickshaw and pursuant thereto, the police have also filed the charge sheet under Ex.P6. One Mr.K.Baskar, Investigator of the second respondent insurance company was examined as R.W.1, who has deposed that on investigation it was found that the driver of the auto-rickshaw bearing Registration No.TN 04 AC 6201 involved in the accident was not having a valid and effective driving licence, therefore, a legal notice was also sent to the owner and the driver of the offending auto-rickshaw calling upon them to produce the driving licence. Though the said notices were received and acknowledged by the first respondent owner and his driver, they evaded to produce the driving licence, thereby the first respondent Maduraiveeran has violated the terms and conditions of the policy. It is also seen that subsequent to the filing of the charge sheet before the VI Metropolitan Magistrate Court, Chennai, the driver of the auto-rickshaw has paid the fine admitting his guilt. The above finding recorded by the Tribunal clearly shows that the driver of the offending auto-rickshaw was not having a valid driving licence and that his inexperience in driving the vehicle had resulted in the accident. Although the Tribunal has recorded a finding that the injured had sustained only simple injuries, the OP chit, Ex.P4 issued by the Rajiv Gandhi Government General Hospital, Chennai clearly shows that the injured had experienced pain in her left hip and contusion after the accident. The injured had also deposed that she was studying teacher training course and taking tuition at home, thereby earning a sum of Rs.5,000/- per month. Further, the copies of the identity card, Ex.P7, fee statement, Ex.P8 and admission fee receipt, Ex.P9 would cumulatively show that the injured, after the accident, was unable to perform her routine work. Therefore, towards loss of amenities, this Court, finding that the Tribunal has not awarded anything, is inclined to award a sum of Rs.30,000/- in addition to the sum of Rs.20,000/- awarded by the Tribunal. Finally, the appellant/claimant is entitled to a total compensation of Rs.50,000/- together with 7.5% interest per annum from the date of petition till the date of realisation. The second respondent

insurance company, being the insurer of the offending vehicle, is hereby directed to deposit the entire amount of compensation along with interest to the credit of the M.C.O.P.No.2660 of 2011 on the file of the Motor Accident Claims Tribunal, (V Judge, Court of Small Causes), Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the entire amount along with accrued interest by moving appropriate application before the Tribunal. The civil miscellaneous appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ss
To

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.66492
+1cc to Mr.R.Ravichandran, Advocate Sr.66975

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