IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.292 of 2010

L.Christopher ... Appellant/Petitioner

Vs.

1. K.Karunakaran
(R1 remained absent and was
set exparte in the trial court)

2. National Insurance Company Limited,
Motor third party claims office,
No.751, Anna Salai,
Chennai-2. ... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the quantum of compensation Awarded by the II Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai on 10.11.2008 made in MCOP No.4638 of 2005.

For Appellant : Mr.R.Arundattan

For 2nd Respondent : Mr.D.Baskaran

First respondent : Exparte

J U D G M E N T

The appellant is the claimant in MCOP No.4638 of 2005 on the file of the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2. The appellant/claimant filed a claim petition in MCOP No.4638 of 2005 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 09.04.2005.

3. The brief case of the appellant/claimant is as follows.

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On 09.04.2005, the appellant/claimant was riding his scooter bearing registration No.MP-16-B-1991 along Velachery Main Road. At about 16.30 hours, when he was nearing Venkateswara Super Market, a speeding auto ricksha bearing registration No.TN-07-AW-2740 belonging to the first respondent, hit the two wheeler, as a result of which, the appellant/claimant sustained grievous injuries. According to him, the rash and negligent driving of the driver of the auto rickshaw was the cause of the accident and that since the owner of the auto-rickshaw, the first respondent insured his vehicle with the 2nd respondent, both of them, are jointly and severally liable to pay compensation to him.

4. In the tribunal, the first respondent/ owner of the auto-rickshaw remained absent and was set exparte and the 2nd respondent/insurance company resisted the claim petition by filing a counter affidavit.

5. The tribunal, after analysing the evidence on record, has awarded a compensation of Rs.99,500/- together with interest at the rate of 9.5% per annum. Not satisfied with the quantum of compensation, the claimant has filed the present appeal seeking enhancement of compensation.

6. Mr.R.Arundattap, learned counsel appearing for the appellant would contend that the claimant sustained "grade III B right tibia with Bimallilal fracture of right" as per the discharge summary Ex.A2 and he took treatment as an inpatient in Government Hospital, Royapettah and ESI Hospital. He would further contend that though Ex.P2 to Ex.P4 would clearly show that he was hospitalized for more than 50 days and also took treatment as an out patient continuously, a very meagre amount of Rs.10,500/- is awarded towards loss of income, which has got to be enhanced. It is his further contention that Dr.J.R.R.Thiagarajan assessed the partial permanent disability as 65%. However, the tribunal fixed the disability as 55% and awarded only a sum of Rs.55,000/-

7. Relying on the decision in Syed Mehaboob Vs. New India Assurance Company Limited reported in 2011 ACJ 1667, the learned counsel appearing for the appellant would contend that when the appellant sustained "Grade III B right tibia with Bimallilal fracture of right" as per Ex.A2, multiplier method should have been adopted by the tribunal. In the decision cited above, the claimant was a driver by profession and he sustained compound type 3-A fracture of left femur, compound type-2 supracondylar fracture of left femur and fracture of right pubic bone and therefore, the Honourable Supreme Court held that

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multiplier method should be adopted. As far as the present case is concerned, the appellant/ claimant is working as a house keeping supervisor and since there is no functional disability, multiplier method is not warranted. Further more, the accident took place in the year 2005 and hence the tribunal awarded a sum of Rs.55,000/- for partial permanent disability, which cannot be stated to be very meagre. Apart from the above amount, the tribunal awarded Rs.20,000/- towards "pain and sufferings and mental agony" and Rs.3,000/- towards "transportation ", Rs.5,000/- towards "extra nourishment", which cannot be stated to be very meagre, considering the nature of injuries sustained by the claimant. In fact, the tribunal has awarded a just compensation, based on the principles of law prevailing at that point of time. The tribunal has also awarded a sum of Rs.1,000/- towards "Medical Expenses", though the claimant took treatment in the Government Hospital, Royapettah and ESI Hospital and no medical bills were produced by him. In addition to that a sum of Rs.1,500/- towards "damages to clothing" and Rs.2,500/- towards "Attender's charges" were also awarded. The compensation awarded under various heads by the tribunal appears to be very reasonable in the facts and circumstances of the present case. However, the tribunal has held that the petitioner has taken treatment as inpatient for nearly 50 days and by taking the income of the claimant as Rs.3,500/- per month, awarded a sum of Rs.10,500/- towards "loss of income" for three months. A perusal of the medical records shows that the first respondent/claimant would not have been in a position to attend his work atleast for 6 months, on account of the injury sustained by him. Therefore the award towards "Loss of income" is enhanced from Rs.10,500/- to Rs.21,000 (3,500 x 6). The award under other heads does not warrant any interference by this court.

8. It is brought to the notice of this court that the entire compensation amount has already been deposited by the insurance company. Hence, the insurance company/2nd respondent is directed to deposit the enhanced amount of Rs.10,500/- (1,10,000 - 99,500) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

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9. In the result,

(i) The appeal is allowed in part and the claimant is entitled to the enhanced compensation of Rs.10,500/- (1,10,000 - 99,500) together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

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(ii) The 2nd respondent is directed to deposit the said amount along with interest, within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the 2nd respondent, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

(iv) No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst
To

The II Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

Copy to

The Section officer,
VR Section, High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate Sr.86141

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