

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3781 of 2013

Santhosh Kumar

... Appellant/ Petitioner

Vs.

1. P.Srinivasan

2. United India Insurance Company Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal.

3. R.S.Shivakumar

4. ICICI Lombard General Insurance,
Salem Branch,
No.6/5, Block No.7,
Swarnambigai Plaza, Ward "C"
Omalur Main Road,
Salem - 636 009.

... Respondents/ Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Award dated 04.10.2012 passed in M.C.O.P.No.552 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Krishnagiri.

For Appellant : Mr.P.Mani

For R2 : Mr.C.Paranthaman

For R4 : Mr.R.Sreevidhya

R1 - Served - No Appearance

R3 - Served - No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Award dated 04.10.2012 passed in M.C.O.P.No.552 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Krishnagiri.

2. The case of the appellant is that on 11.04.2007 at about 07.30 p.m., the petitioner traveled in Tata Sumo Victa New bearing Temporary Registration No. TN-01-ACT-1191 belonging to third respondent and insured with fourth respondent as passenger. While the car (Tata Sumo Victa) was proceeding from Salem towards Krishnagiri near Karimangalam Junction Road, a Lorry bearing Registration No. TN-28-AA-1406 belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and hit against the car. Due to which, the appellant sustained fracture on his right scalp, cervical bone and simple injuries on his left eyebrow, left eye, left elbow and right forearm. Immediately, he was taken to Krishnagiri and admitted in Jeeva Hospital for first aid and then he was shifted to Government H.Q. Hospital.

3. After few days of treatment, he got discharged from Government H.Q. Hospital and thereafter he had taken further treatment in a Private Hospital at Krishnagiri. In spite of the prolonged treatment, he was unable to do any work and he was suffering from giddiness, headache and neurological problems. Thus, he became permanently disabled. Prior to the accident, he was studying in 1st year BBA. On account of the permanent disability, he could not concentrate in studies, he has been suffering from immense pain and he almost lost his earning capacity. The accident occurred only due to the rash and negligent driving of the drivers of both first and third respondents and the second and fourth respondents are the insurers of the vehicles involved in the accident and hence he filed a Petition before the Principal Sub Judge (Motor Accident Claims Tribunal), Krishnagiri, claiming Rs.5,00,000/- as compensation under various heads.

4. Denying the allegations of the appellant, the second respondent filed a counter affidavit stating that the accident took place only due to the rash and negligent driving of the driver of the Lorry and he was not having valid driving licence at the time of accident and hence, they are not liable to pay any compensation to the appellant. Further, the allegation that the appellant sustained grievous injuries and he has spent more money for the treatment and in spite of which, he became permanently disabled are all false and sought for dismissal of the petition.

5. The fourth respondent insurance company also filed counter affidavit denying the allegations stating that they had not received any information regarding the accident occurred on 11.04.2007 and hence the appellant has to produce relevant records before this Court regarding the vehicle involved in the accident and the reports of police pertaining to the accident. Further, it has been stated that the injuries sustained by the appellant are all simple in nature and there was no permanent or partial disability caused to him. Moreover, the medical expenses incurred by him are not supported by any genuine medical bills and the amount of compensation claimed by him is highly excessive.

6. The Principal Sub Judge (Motor Accident Claims Tribunal), Krishnagiri, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.1,01,200/- as compensation to the claimant. Aggrieved by the same, the appellant/claimant has filed this appeal before this Court.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents, and perused the materials available on record.

8. On perusal of the award dated 04.10.2012 passed by the Principal Sub Judge (Motor Accident Claims Tribunal), Krishnagiri, it is observed that one Gubenthiran who was also traveled in the car involved in the accident occurred on 11.04.2007 examined as PW1 and marked Ex.A1 F.I.R. which was registered before the Karimangalam Police Station in Cr.No.237 of 2007 on 12.04.2007 under Section 279 and 337 IPC against the driver of the third respondent's car, and only based on which, the Principal Sub Judge has come to the conclusion that the accident occurred only due to the rash and negligent driving of the third respondent's car driver and the third and fourth respondents are liable to pay the compensation to the appellant/claimant. Further, it is observed that the appellant in order to prove the gravity of his injuries examined himself as PW2 and marked Ex.A10 Wound Certificate which was issued in the Krishnagiri Government Hospital. Besides, one Dr.Krishna Kumar was examined on the side of the appellant as PW3 and deposed that after the treatment, the appellant suffers from stiffness of muscles in neck region and due to which, he sustained 35% disability. In order to prove the same, the doctor has also marked the disability certificate as Ex.A9, and only based on which, the Principal Sub Judge has fixed 35% disability and awarded Rs.70,000/- i.e. Rs.2,000/- per percentage under the said head.

9. It is also observed from the award passed by the Court below that the appellant has marked all the medical bills to prove the expenses made for the treatment, and only after considering the same, the Principal Sub Judge has awarded Rs.11,200/- towards medical expenses. The sum of Rs.10,000/- awarded towards Transport, Attender and Nutrition is found to be meager and hence the same is hereby enhanced to Rs.20,000/- as the appellant had taken treatment in various hospitals and he would have spent more for transport and extra nourishment. Moreover, it is observed that the appellant was not awarded any amount towards Loss of Income and Amenity. During the period of treatment, definitely he would have suffered loss of income and amenity and therefore, a sum of Rs.15,000/- is awarded under the said head. The sum of Rs.10,000/- awarded under the head of pain and sufferings is found to be reasonable and hence the same is hereby confirmed.

10. In view of above observations, the compensation awarded by the Principal Sub Judge (Motor Accident Claims Tribunal), Krishnagiri, is modified in the following manner :

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
1.	Disability	70,000	70,000	Confirmed
2.	Loss of Income and Amenity	-	15,000	Granted
3.	Pain and Sufferings	10,000	10,000	Confirmed
4.	Transport, Attenders and Nutrition	10,000	20,000	Enhanced
5.	Medical Expenses	11,200	11,200	Confirmed
	Total	1,01,200/-	1,26,200/-	Enhanced by 25,000/-

11. Accordingly, the fourth respondent insurance company is directed to deposit the said amount with interest at the rate of 6% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant can withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

raja

To

1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal), Krishnagiri,

Copy to:

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

+1cc to Mr.P.Mani , Advocate SR.No.101774

+2ccs to Mr.C.Paranthaman , Advocate SR.No.101931,102346

C.M.A.No.3781 of 2013