

Muthu Kumar (Minor) and Another Vs. V.M. Hidayathulla and Another

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Court : Chennai

Decided On : Oct-29-2015

Judge : C.S. Karnan

Appeal No. : C.M.A.Nos. 3531 & 3532 of 2012

Appellant : Muthu Kumar (Minor) and Another

Respondent : V.M. Hidayathulla and Another

Judgement :

(Prayer In Both Appeals: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, to enhance the award against the judgment and decree dated 04.11.2009 made in M.A.C.O.P.No.3989 of 2003 and M.A.C.O.P.No.3990 of 2003, on the file of the Motor Accidents Claims Tribunal, Fast Track Court-I, Chennai.)

Common Judgment:

1. The short facts of the case are as follows:-

On 30.08.2003 at about 08.30 hours, when the petitioners, in both the claim petitions viz., M.C.O.P.Nos.3989 of 2003 and 3990 of 2003 were riding their cycle at Chetpet St.Peter Lord Road opposite to C.M.C.T. School, a car bearing registration No.TN-01-Q-2595 driven by its driver in a rash and negligent manner, hit against the petitioners causing grievous injuries to both. Hence, the petitioners

had filed the claim against the owner and insurer of the car.

2. The second respondent / Insurance Company had filed a counter statement and resisted the above writ petition. The second respondent had denied that the first respondent's vehicle bearing registration No.TN-01-Q-2595 was insured with this respondent on the date of accident. The second respondent further submitted that the driver of the first respondent was not possessing a valid effective driving license on the date of the accident. It was also submitted that the claim was excessive.

3. The Tribunal after considering the averments of both parties had framed six issues. On the side of the claimants, three witnesses were examined and nine documents were marked. On the side of the respondents, no witness, no exhibits.

4. The Tribunal, after scrutiny of oral and documentary evidence, awarded a sum of Rs.33,700/- as compensation to the claimant in M.C.O.P.No.3989 of 2003 with interest at the rate of 7.5% per annum and awarded a sum of Rs.39,000/- as compensation to the claimant in M.C.O.P.No.3990 of 2003 with interest at the rate of 7.5% per annum.

5. Not being satisfied with the award passed by the Tribunal, the claimants in M.C.O.P.Nos.3989 and 3990 of 2003 have filed the appeals in C.M.A.Nos.3531 and 3532 of 2012.

6. The learned counsel Ms.Malar appearing for the appellant / claimant in C.M.A.No.3531 of 2012 submits that the claimant had sustained fracture of bone his left shoulder and dislocation of left shoulder, contusion in the occipital region in the scalp and multiple injuries all over the body. The doctor who examined the claimant had assessed the disability as 30% and as such, the Tribunal ought to have awarded Rs.60,000/- under this head by taking Rs.2,000/- per percentage disability, but the Tribunal had granted only Rs.25,000/- under the head of permanent disability which is on the lower side. Further, the Tribunal had not awarded under the head of damages to the clothe and articles of the claimant. Further, the Tribunal had not granted any award under the head of transport expenses, nutrition and attender charges. Further, the award granted under the

head of pain and suffering is also on the lower side. The learned counsel further submits that as the claimant is not able to walk as before, the Tribunal should have granted an award under the head of loss of amenities. Hence, it was prayed to grant additional compensation of Rs.76,300/- with interest.

7. The learned counsel Ms.Chithra Devi appearing for the appellant / claimant in C.M.A.No.3532 of 2012 submits that the Tribunal failed to consider the disability of 30% sustained by the claimant and awarded only a sum of Rs.25,000/- under this head instead of Rs.60,000/- under this head by taking Rs.2,000/- per percentage disability. Further, the Tribunal ought to have awarded more compensation under the heads of transport expenses, nourishment, attender charges and pain and suffering. Further, the Tribunal failed to consider the income of the deceased and awarded only Rs.4,500/- as compensation for loss of earning during medical treatment period. Hence, it was prayed to grant additional compensation of Rs.71,000/- with interest.

8. The learned counsel Mr.N.Sampath appearing for the second respondent / Insurance Company submits that the Tribunal failed to consider that the first respondent's vehicle bearing registration No.TN-01-Q-2595 was not insured with this respondent on the date of accident. The second respondent further submits that the driver of the first respondent was not possessing a valid effective driving license on the date of the accident. It was further submitted that the appellants had taken treatment in a Government Hospital at free of cost. Further, the Tribunal had awarded adequate compensation under the relevant heads to the claimants in both appeals. Hence, the learned counsel entreats this to dismiss the above appeals.

9. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed-set of papers, this Court is of the view that the claimants in both the appeals have sustained multiple injuries. However, the Tribunal had not granted adequate compensation under the relevant heads. Hence, this Court reassesses the compensation as follows:

C.M.A.No.3531 of 2012 (M.C.O.P.No.3989 of 2003)

This Court grants an award of Rs.60,000/- under the head of disability, considering that the claimant had sustained 30% disability (30% x Rs.2000); Rs.10,000/- is awarded for transport charges; Rs.10,000/- is awarded for nutrition; Rs.10,000/- is awarded for attender charges; Rs.10,000/- is awarded under the head of pain and suffering; Rs.700/- is awarded for medical expenses and Rs.9,300/- is awarded for loss of amenities. In total, this Court grants compensation of a sum of Rs.1,10,000/-. After deducting the initial compensation of a sum of Rs.33,700/- awarded by the Tribunal, this Court grants additional compensation of Rs.76,300/- which is the appeal value. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation.

C.M.A.No.3532 of 2012 (M.C.O.P.No.3990 of 2003)

This Court grants an award of Rs.60,000/- under the head of disability, considering that the claimant had sustained 30% disability (30% x Rs.2000); Rs.10,000/- is awarded under the head of loss of income during medical treatment period; Rs.5,000/- is awarded for transport charges; Rs.10,000/- is awarded for nutrition; Rs.5,000/- is awarded for attender charges; Rs.10,000/- is awarded under the head of pain and suffering and Rs.10,000/- is awarded for loss of amenities. In total, this Court grants compensation of a sum of Rs.1,10,000/-. After deducting the initial compensation of a sum of Rs.39,000/- awarded by the Tribunal, this Court grants an additional compensation of Rs.71,000/-, which is the appeal value. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation.

10. Therefore, this Court directs the second respondent / Oriental Insurance Company Limited to deposit the additional compensation amount with interest as ordered by this Court in both the appeals within a period of six weeks from the date of receipt of a copy of this order. After such deposit being made, it is open to the claimant in C.M.A.No.3531 of 2012 (M.C.O.P.No.3989 of 2003) to withdraw his compensation amount, after producing proof that he has become a major and after filing a memo, along with a copy of this order; it is open to the claimant in C.M.A.No.3532 of 2012 (M.C.O.P.No.3990 of 2003) to withdraw his compensation after filing a memo, along with a copy of this order.

11. In the result, both the appeals are allowed. There is no order as to costs.

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