IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2015

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THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CMA No.2238 of 2015
and
MP.No. 01 of 2015

The Oriental Insurance Co.Ltd.
(Motor Third Party Cell)
No.216/115, Prakasam Salai,
Broadway, Chennai -104 .. Appellant/2nd respondent

Vs

1. Ramesh
2. Sivakumar .. Respondents/Petitioner & 1st respondent

Appeal against the judgment and decree dated 26.2.2015 passed by the learned Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in MCOP No.5391 of 2011.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.K.Ganesh Babu for R1

J U D G M E N T

The Oriental Insurance Company is the appellant.

2. The claimant/first respondent, who sustained grievous injuries in the accident that took place on 22.12.2008 has filed a claim petition before the Court below claiming compensation in a sum of Rs.20,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.10,12,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of decree. Questioning the same, the present appeal has been filed by the Insurance Company.

3. Learned counsel appearing for the appellant would submit that the court below erred in awarding a sum of Rs.3,000/- per disability for the permanent disability at 65%. The amount awarded towards pain and suffering and extra nourishment are also on the higher side. Similarly, the amount

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awarded towards transport and attendant charges are very excessive as the claimant took treatment only for few days. Therefore, the learned counsel submits that the amount awarded by the tribunal needs interference of this Court.

4. Learned Counsel appearing for the first respondent/ Claimant would submit that the Court below, after taking into consideration the entire medical records and also the documents produced on the side of the claimant, has rightly awarded a sum of Rs.10,12,000/- and hence, no interference is warranted in this appeal.

4. Heard both sides and perused the materials placed on record.

5. The learned counsel appearing for the appellant/Insurance Company fairly states that they are mainly aggrieved of the quantum determined by the Tribunal, that too, by awarding loss of earning power after awarding permanent disability. In such circumstances, there is no need for us to go into the finding relating to negligence.

6. On a perusal of the order passed by the Court below, it is seen that the doctor has given certificate assessing 75% disability but the Court below has taken only 65% disability and awarded Rs.3,000/- per disability, which is very reasonable and hence the same is confirmed. The Court below has awarded a sum of Rs. 1,50,000/- towards pain and suffering and Rs.1,00,000/- towards Extra nourishment, which are on the higher side. Since already Rs.3,000/- per disability has been awarded, I am inclined to award Rs.1,00,000/- towards pain and suffering and Rs.60,000/- towards extra nourishment. Further, the Court below has awarded Rs.50,000/- towards transportation. Since the claimant has not produced any receipt, the same is reduced to Rs.40,000/-. Similarly, a sum of Rs. 40,000/- awarded towards attender charge is also very high as the claimant has not produced any receipt. However, considering the treatment undergone by the petitioner, I am inclined to award a sum of Rs.30,000/- under the said head. A sum of Rs.3,000/- awarded by the Court below towards damages to clothes is very reasonable and hence, the same is confirmed. The court below has rightly awarded a sum of Rs. 2,46,000/-towards medical expenses based on the bills produced by the claimant and hence, the same is confirmed.

7. Further, the Court below has awarded a sum of Rs.78,000/- towards loss of income. As the claimant has not produced sufficient proof that he is getting the actual income from DVD and CD business, the same is reduced to Rs.70,000/-.

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The Court below has also awarded a sum of Rs.50,000/- towards loss of amenities, which is reasonable and correct and hence the same is confirmed. Since the doctor has specifically stated that the claimant requires treatment for his left leg, the Court below ought to have awarded a sum of Rs.1,00,000/- towards future medical expenses. But the Court below has awarded only a sum of Rs.50,000/- under the said head. Hence, the same is enhanced to Rs.1,00,000/-. Since already a sum of Rs.1,95,000/- has been awarded towards disability, Rs.50,000/- awarded by the Court below under the head loss of earning power is not fair. Hence, no amount is awarded under the said head.

8. In view of the above, the compensation awarded by the Court below is modified as follows:

Disability	- Rs.1,95,000/-
[65% @ Rs.3,000/- per percentage]	
Pain and suffering	- Rs.1,00,000/-
Extra nourishment	- Rs. 60,000/-
Transport to Hospital	- Rs. 40,000/-
Damage to clothes	- Rs. 3,000/-
Attender Charge	- Rs. 30,000/-
Medical Expenses	- Rs.2,46,000/-
loss of income during treatment and Hospitalization	- Rs. 70,000/-
loss of amenities	- Rs. 50,000/-
Future Medical Expenses	- Rs.1,00,000/-
	- Rs. 8,94,000/-

Accordingly, a sum of Rs.8,94,000/- [Rupees Eight lakh ninety four thousand only] is awarded as compensation.

9. The appellant-Insurance company is directed to deposit the amount, less the amount already deposited, if any, as modified by this Court within a period of six weeks from the date of receipt of a copy of this order. The award will carry interest at the rate of 7.5% from the date of petition. On such deposit being made, the first respondent/claimant is entitled to withdraw the entire compensation amount along with interest, less the amount already withdrawn, if any, on making out a proper application before the court below. It is made clear that if the Insurance company already deposits the entire award amount, they are at liberty to withdraw the balance amount with accrued interest.

10. Accordingly, the Civil Miscellaneous Appeal is partly

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allowed reducing the amount from Rs.10,12,000/- to Rs.8,94,000/-. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

+1 cc to Mr.N.Vijayaraghavan, Advocate, sr.55812
+1 cc to Mr.B.Prabhakaran, Advocate, sr.54977

CMA NO.2238 of 2006

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