

In the High Court of Judicature at Madras

Date : 24.08.2015

Coram :

THE HON'BLE MR.JUSTICE R.SUDHAKAR

C.M.A. No: 2457 of 2010

The Oriental Insurance Co. Ltd.

Suguna Building

No: 707 Avinashi Road

Coimbatore - 641 018.

... Appellant/Respondent III

-vs-

1. Thiru. Mohammed Ibrahim
S/o. Mohammed Hussain
No: 135, N.H. Road
Nall Mara Sandhu
Marakadi, Coimbatore Dist. ... Respondent-I/Petitioner
2. Thiru.P. Babu Prasad
S/o. Ponraj
No: 57 Balusamy Nagar
Rathinapuri
Coimbatore District. ... Respondent-II/Respondent-I
3. Thiru. P. Senthil Kumar
S/o. Palanivel
No: 258 4th Street
Saibaba Colony
Coimbatore District. ... Respondents-III/Respondent-II

Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree passed in M.C.O.P. No: 339 of 2008 dt. 07.01.2010 on the file of the learned Motor Accidents Claims Tribunal (Ist Additional Sub-Ordinate Judge) at Coimbatore District.

For Appellant : M/s. J. Chandran

J U D G M E N T

The Insurance Company is on appeal challenging the award dated 07.01.2010 passed in M.C.O.P. No. 339 of 2008 on the file of the Motor Accidents Claims Tribunal (Ist Additional Subordinate Judge), Coimbatore.

2. It is a case of an injury. The accident in this case happened on 13.4.2007 at about 9.30 a.m. The claimant one Mohammed Ibrahim was proceeding to his work by riding his son's bicycle. Near 105 ft. road

Dr. Radha Krishna Road junction, when he was proceeding from west to east, a Hero Honda Splendor Motor Cycle bearing registration No: TN 38 M 0117 being driven by the 2nd respondent herein dashed against him. In that accident the claimed suffered head injury and an injury each on the left side of his head and on the left elbow. He was initially admitted at Senkottaiyan Hospital, Sivanandha Colony, Coimbatore and thereafter shifted to ESI Hospital, Singanallur, Coimbatore, for further treatment. The claimant took treatment in ESI Hospital, Coimbatore, as in-patient from 13.04.2007 to 21.04.2007. FIR was registered against the 2nd respondent who drove the motor cycle in a rash and negligent manner and caused the accident. The 2nd respondent herein was prosecuted for the offence under Sections 279 and 337 of I.P.C. In Cr. No: 142 of 2007 by the Traffic Investigation Wing (Central) and he pleaded guilty of the offence before the Judicial Magistrate No. VIII in S.T.C. No: 217 of 2007 at Coimbatore. The claimant filed a claim for compensation in a sum of Rs.2,75,000/-. According to the claimant, he was running an Omega - upholseries, stitching and fitting shop and was earning a sum of Rs.5,000/- per month.

3. In support of the claim, the claimant examined himself as P.W.1. The Doctor was also examined as P.W.2. Exs. P-1 to P-9 were marked, the details of which are as follows:-

Ex.P-1 is the copy of FIR

Ex.P-2 is the copy of charge sheet

Ex.P-3 is the copy of judgment rendered in S.T.C. No: 217 of 2007 by the Judicial Magistrate No. VIII, Coimbatore.

Ex.P-4 is the copy of the report submitted by the Motor Vehicle Inspector

Ex.P-5 is the accident register

Ex.P-6 is the rough sketch

Ex.P-7 series are the medical bills

Ex.P-8 is the copy of the disability certificate

Ex.P-9 is the x-rays

Neither any witness was examined nor any document was marked on behalf of the respondents before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the 2nd respondent had admitted his guilt in the proceedings before the learned Judicial Magistrate, came to conclusion that the 2nd respondent was responsible

for the accident and consequently liability was fixed on the appellant and respondents 2 and 3 herein, as insurer, driver and owner of the vehicle involved in the accident respectively. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 15,000/-
2	Transportation	Rs. 1,000/-
3	Damage	Rs. 1,000/-
4	Medical expenses	Rs. 5,618/-
5	Towards mental agony	Rs. 10,000/-
6	Towards Pain & Suffering	Rs. 10,000/-
7	Towards disability	Rs. 35,000/-
8	Towards future prospects	Rs. 30,000/-
	Total	Rs.1,07,618/-

6. In so far as the amount granted towards compensation is concerned, according to the claimant he was employed as a tailor in his own shop and was earning a sum of Rs. 5,000/- per month. Since this sum was not an exorbitant one, the Tribunal choose to accept it as claimant's monthly income and granted a sum of Rs. 15,000/- towards loss of income for three months during the period of accident. Though the claimant had claimed a sum of Rs.5,000/- towards transportation charges, considering the distance between the place of accident and the hospitals in which the claimant had undertaken treatment, the Tribunal had granted a sum of Rs. 1,000/- for transportation. Similarly, though the claimant had claimed a sum of Rs. 10,000/- for nutrition and a sum of Rs. 4,000/- for damages to bicycle and clothes, the Tribunal, taking into account the nature of the injury, while disallowing the claim for nutrition and damages for bicycle, had granted a sum of Rs. 1,000/- towards damages to clothes alone. Further, the claimant had sought for a sum of Rs.50,000/- towards medical expenses. But, by placing reliance on Ex.P.7, Medical Bills, the Tribunal had awarded a sum of Rs. 5,618/- towards medical expenses. Though the claimant had claimed a sum of Rs. 20,000/- for mental agony and a sum of Rs. 40,000/- towards pain and suffering, the Tribunal thought it fit to award a sum of Rs. 10,000/- on each head. The Tribunal declined to grant the sum of Rs. 25,000/- claimed towards future medical treatment as there was no evidence in that regard. As to the claim of the claimant of a sum of Rs. 45,000/-

towards disability suffered in the accident, the Tribunal, placing reliance on the evidence of the Doctor-P.W. 2 and Ex.P.8 the disability certificate indicating that the claimant had suffered 35% disability, granted a sum of Rs. 35,000/-. Considering the disability suffered, the Tribunal had granted a sum of Rs. 30,000/- towards loss of future prospects as claimed. In all, the Tribunal had granted a sum of Rs. 1,07,618/- as compensation to the claimant.

7. Considering the facts and circumstances of the case, this Court is of the opinion that the compensation granted by the Tribunal on the aforesaid heads are reasonable and it does not require any reduction or modification. Hence, it is confirmed. There is no dispute with regard to interest granted by the Tribunal at 7.5% and the same is also confirmed.

8. Accordingly, finding no merit, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to the costs.

gp

Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

The Presiding Officer
Motor Accidents Claims Tribunal
Ist Additional Sub-Ordinate Judge
Coimbatore District.

+1 C.C. To MR.J.Chandran, Advocate in SR.NO.45636

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C.M.A. No: 2457 of 2010

AD(CO)
Sd/-13/10/2015