

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 2084 OF 2006

The Oriental Insurance Co. Ltd.
No.8, Esplanade
Chennai 108.

... Appellant/2nd Respondent

- Vs -

1. Mr. Shan @ Darshan Kumar ... 1st Respondent/Petitioner
2. Mr. Kunal Madhok ... Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 7.11.2005, passed by the Motor Accident Claims Tribunal (Small Causes Court No.III), Chennai, made in MCOP No.2326 of 2000.

For Appellant : Mr. J.Chandran

For Respondents: No Appearance

JUDGMENT

Heard the learned counsel appearing for the appellant. There is no representation for the respondents.

2. The appeal has been filed by the insurer of the vehicle, viz., Oriental Insurance Company, challenging the award dated 07.11.05 passed by the Motor Accidents Claims Tribunal (Small Causes Court No.III), Chennai, made in M.C.O.P. No.2326 of 2000, fixing the liability on the insurer.

3. It is a case of injuries sustained by the first respondent in an accident that happened on 21.5.99. On 21.5.99, at about 07.10 p.m., when the first respondent, Shan @ Darshan Kumar, aged 19 years, was proceeding as a pillion rider in the TVS Champ vehicle bearing Regn. No.TN-07-2039 towards Egmore from the signal at Spurtank Road in Chetpet, the Maruti Omni Van, driven by the second respondent, bearing Regn. No.PLT-1652, coming in the opposite direction, in a rash and negligent manner, hit the TVS Champ and as a result of the accident, the first respondent suffered severe injuries. The first respondent was initially admitted at the Government Hospital at Kilpauk and, thereafter, took treatment as in-patient in the Apollo

Hospital. A case was registered against the driver of the Maruti Omni Van under Sections 338, 337 and 184 IPC on the file of the Chief Metropolitan Magistrate, Egmore.

4. The first respondent herein, who suffered the accident and sustained injuries, claimed compensation in a sum of Rs.4,00,000/-. In support of the claim, the first respondent examined himself as P.W.1 and P.W.s 2 and 3, viz., Dr.Sai Chandran, Orthopedic Surgeon and Head Constable V.P.Sivaraman were examined and Exs.P-1 to P-8 were marked, the details of which are as follows:-

Ex.P-1	-	Discharge Summary
Ex.P-2	-	Medical Bills Series
Ex.P-3	-	Examination Report
Ex.P-4	-	Copy of F.I.R.
Ex.P-5	-	Copy of the Accident Register
Ex.P-6	-	Hospital Medical Receipt
Ex.P-7	-	Disability Certificate
Ex.P-8	-	X-ray

5. The Insurance Company examined one P.Narendran, Asst. Administrative Officer of the Company as R.W.1 and marked Exs.R-1 to R-3, the details of which are as under :-

Ex.R-1	-	Proof of Application (tpz;zg;g rhd;W)
Ex.R-2	-	Copy of the Insurance Policy
Ex.R-3	-	Xerox copy of RC Book

6. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that corroborating evidence in the form of the evidence of P.Ws.2 and 3 has been adduced by the first respondent to prove that the van was driven in a rash and negligent manner as also the injuries sustained resulting in disability, and also taking into account the documentary evidence, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van and, therefore, the liability was fixed on the second respondent herein viz., the owner of the van and consequently the appellant, viz., the insurer of the van, was directed to compensate the first respondent.

7. Insofar as negligence is concerned, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. The Tribunal, on considering the evidence, both oral and documentary, awarded the following amounts under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Transportation Expenses	Rs.2,000/-
2	Extra Nourishment	Rs.2,000/-
3	Medical Expenses	Rs.85,000/-
4	Loss of Education	Rs.10,000/-
5	Pain & Suffering	Rs.10,000/-
6	Permanent Disability @ 40%	Rs.45,000/-
7	Loss of future earning capacity	Rs.45,000/-
	Total	Rs.1,99,000/-

In all, the Tribunal awarded a sum of Rs.1,99,000/- towards the claim as made by the first respondent along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of payment.

9. The only serious issue raised by the appellant/insurance company in the present appeal is that the vehicle, which was involved in the accident having been subsequently sold, the policy has not been transferred in the name of the subsequent purchaser. It is the submission of the appellant/insurance company that the vehicle having been sold by the owner and the policy having not been transferred in the name of the subsequent purchaser, the appellant/insurance company cannot be fastened with the liability to pay the amount awarded.

10. The said contention of the appellant/insurance company, even on the face of it, does not merit acceptance. The transfer of the policy in the name of the subsequent purchaser cannot be a ground to deny the claim of the first respondent. In spite of the fact that the policy has not been transferred in the name of the subsequent purchaser, yet the insurance company is liable to make good the compensation, as in the case of transfer of vehicle, there is a deeming provision under Section 157 of the Motor Vehicle Act, which mandates the deemed transfer of the policy in the name of the subsequent purchaser. In such view of the matter, this Court is of the considered view that the submission as made by the appellant cannot be sustained.

11. On the face of the award, there appears to be no infirmity in the quantum of compensation awarded by the Tribunal as also the award of interest on the said amount.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. It is stated that the appellant has deposited only a sum of Rs.25,000/=, to the credit of MCOP No.2326/2000, at the time of filing this appeal. In view of this Court confirming the award, the appellant/insurance company is directed to deposit the entire award amount, less the amount already deposited, along with interest at the rate of 7.5%, as ordered by the Tribunal, from the date of the claim till the date of deposit to the credit of MCOP No.2326/2000 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent herein is permitted to withdraw the award amount. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-

Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

GLN
To

1.The III Judge
(Motor Accident Claims Tribunal)
Court of Small Causes
Chennai.

2.The Section Officer
VR Section High Court, Chennai-104

+1 cc to Mr.J.Chandran Advocate sr.45641

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