

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3294 of 2012

and

M.P.No.1 of 2012

M/s.Oriental Insurance Co. Ltd.,
A.A. Complex, First Floor,
No.159, Kumaran Road,
Tirupur.

... Appellant/Respondent No.2

vs

1.Jayapal
2.R.Kokila

... 1st Respondent/Petitioner

... 2nd Respondent/Respondents No.1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.126 of 2005 on 31.12.2009, on the file of the Motor Accidents Claims Tribunal (Additional Subordinate-Court), Tirupur at Coimbatore District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Ma.P.Thangavel (for R1)
R2 - No Appearance

JUDGMENT

The petitioner was proceeding along with rider Mr.Manoharan, on the TVS-Champ motorcycle bearing Registration No.TN-39-5671, on the Annamar Temple road, at Poondi on 07.05.2004 and at that point of time, one Ramakrishnan, coming on the opposite direction, on his car bearing Registration No.TN-27-H-1681, dashed his motorcycle against the petitioner's vehicle. As a result, the petitioner sustained multiple injuries all over his body. Hence, the petitioner had levelled a claim in M.C.O.P.No.126 of 2005, against the owner and insurer of the vehicle.

2.The Insurance Company had filed a counter statement and resisted the claim petition. The respondent submits that the claimant had filed a case before the police after two days. Actually, no accident had taken place. Further, the rider of the motorcycle had committed the accident in a negligent manner. The driver of the car and the petitioner had colluded with each other and filed the case. The rider of the motorcycle did not possess valid documents and driving licence. The respondent denied the age, income, occupation and nature of injuries. The claim amount is an excessive one. Hence, the respondent prayed to dismiss the claim petition.

3.The Tribunal had framed two issues namely (i)Whether the accident was due to the rash and negligent act of the driver of the car TN-27-H-1681? and (ii)Whether the petitioner is entitled to compensation and if so, what is the quantum?

4.On the side of the claimant, two witnesses were examined and 7 documents were marked namely Wound Certificate, Discharge summary, Salary Certificate, Medical Bills, Copy of F.I.R., Disability Certificate and X-ray. On the side of the respondent, no one was examined and no document was marked.

5.PW1 had adduced evidence stating that on 05.04.2004, at about 5.00 p.m., when he was travelling on the two wheeler bearing Registration No.TN-39-A-5671, as a pillion rider on the Palladam road, Thirumurugan Poondi, the car bearing Registration No.TN-27-H-1681, coming in the opposite direction and driven in a rash and negligent manner dashed against the motorcycle. As a result, he had sustained injuries. PW1 further stated that he had sustained grievous injuries on his left leg and all over the body. He deposed that he was admitted at Kumaran Hospital, as inpatient. At the time of accident, he was a Singer Tailor, in the Arun Apparels, Tirupur and earned Rs.4,000/- per month. After the accident, he is unable to do his normal work as a tailor.

6.PW2, Doctor had adduced evidence stating that the petitioner suffered permanent partial disability and that his movements of left knee and left angle joint were restricted. He further stated that the petitioner's left leg had been shortened by 1 c.m. PW2 had certified that the petitioner had sustained 30.7% disability. PW1 stated that he had spent a sum of Rs.78,532/- towards medical expenses.

7. After recording the evidence of witnesses and on perusing the exhibits marked by the claimant, the Tribunal had awarded a sum of Rs.3,14,000/- as compensation, with interest at the rate of 7.5% per annum. Aggrieved by the said award, the Insurance Company has filed the above appeal.

8. The highly competent counsel Mr.J.Chandran appearing for the appellant submits that the claimant had lodged the F.I.R., after a delay of two days. As such, the complaint filed by the claimant is done as an after thought. The claimant and driver of the Car had colluded with each other and hence the complaint was lodged after a delay of two days. The very competent counsel further submits that the claimant had sustained simple injuries but the Doctor has fixed the disability at 30.7% in an arbitrary manner. Further, the Tribunal had adopted multiplier method and granted compensation of a sum of Rs.2,30,400/-, based on erroneous view of the Tribunal, since the claimant had sustained simple injuries. The very competent counsel further submitted that the entire compensation amount has been deposited as per this Court's conditional order. Out of the deposited amount, the claimant had withdrawn 50% of the amount, this is the current position.

9. The very competent counsel Mr.Ma.P.Thangavel appearing for the claimant submits that the claimant had sustained multiple bone fracture injuries on his left leg knee and left leg ankle joint and hence, he was admitted at a private hospital, wherein he underwent treatment as an inpatient. Further, the claimant after discharge from hospital had lodged the complaint before the Anuparpalayam Police Station, the Investigation Officer, who is attached to the Traffic Wing Department had registered a criminal case against the driver of the car bearing Registration No.TN-27-H-1681. The learned counsel further submits that the practising doctor has certified that the petitioner had sustained bone fracture injuries on his left leg and that the claimant's left leg had been shortened by 1 c.m. The claimant had spent a sum of Rs.78,532/- towards medical expenses. The Tribunal had not granted adequate compensation under the head of pain and suffering. Besides, the Tribunal had not granted compensation under the heads of Transport, Nutrition, Attender charges, Loss of earning during medical treatment period and loss of amenities.

10.The highly competent counsel submits that the petitioner was a singer tailor at the Arun Apparels, Tirupur and he was earning Rs.4,000/- per month, besides other allowances. After the accident, the claimant is unable to do his normal work as a tailor, as the claimant has suffered multiple bone fracture injuries on his left leg and it has been shortened by 1 c.m. Therefore, the Tribunal had adopted multiplier method and awarded compensation under the head of disability, which is appropriate in the instant case.

11.On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed set of papers, this Court is of the view that the Tribunal had adopted multiplier method which is not proper in the instant case. At the same time, the Tribunal had not ordered compensation under the various admissible heads.

12.Therefore, this Court reassesses the compensation as follows:

Rs.80,000/- is awarded under the head of disability; Rs.25,000/- for pain and suffering; Rs.78,600/- towards medical expenses; Rs.15,000/- for transport; Rs.15,000/- for nutrition; Rs.20,000/- for loss of earning during medical treatment period; Rs.80,400/- under the head of loss of amenities since the claimant's left leg had been shortened by 1 c.m. and as he was a tailor at the time of accident. As such, this Court confirm the quantum of compensation awarded by the Tribunal.

13.As per the submission of the very competent counsel Mr.J.Chandran, the entire compensation amount had been deposited and half the compensation amount had been withdrawn by the claimant. Now, the claimant is at liberty to withdraw the balance compensation amount, with accrued interest thereon, lying in the credit of M.C.O.P.No.126 of 2005, on the file of the Motor Accidents Claims Tribunal / Additional Subordinate Court at Tirupur, after filing a memo, along with a copy of this order. Accordingly, the above appeal is dismissed.

14.In the result, the above appeal is dismissed. Consequently, the Judgment and Decree passed in M.C.O.P.No.126 of 2005, on the file of the Motor Accidents Claims Tribunal / Additional Subordinate Court), Tirupur, Coimbatore District,

dated 31.12.2009, is confirmed. No costs. Consequently,
connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

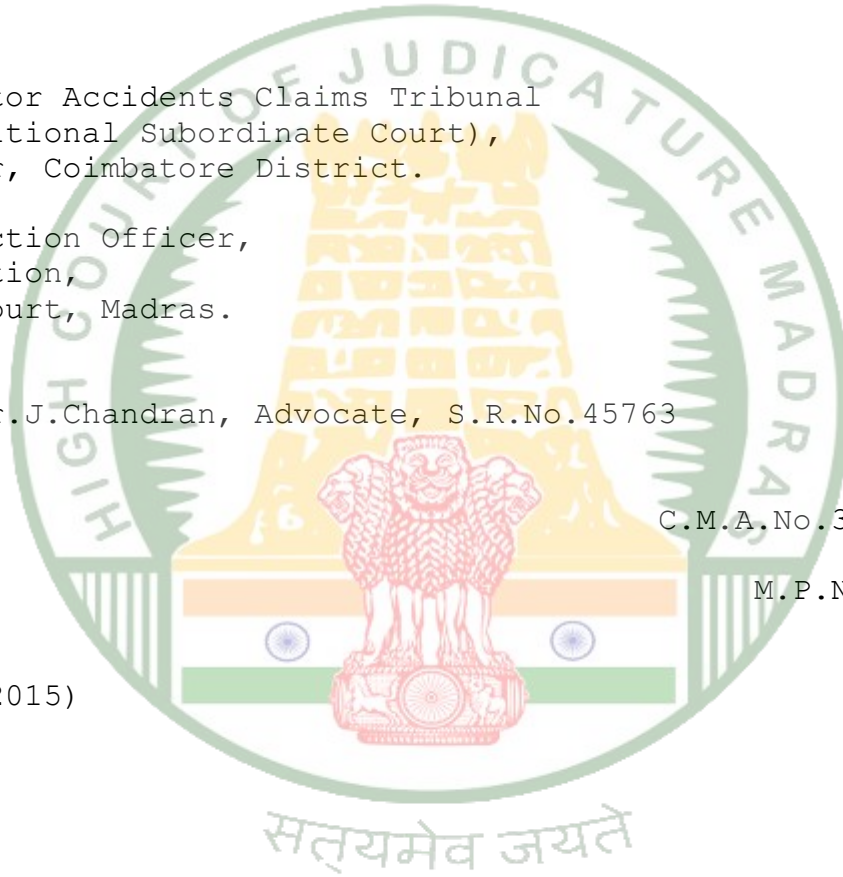
To

1. The Motor Accidents Claims Tribunal
(Additional Subordinate Court),
Tirupur, Coimbatore District.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.45763

C.M.A.No.3294 of 2012
and
M.P.No.1 of 2012

VGI (CO)
CA(15/10/2015)



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