

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR

CIVIL MISCELLANEOUS APPEAL

No. 2250 of 2006

The Oriental Insurance Company Ltd.,
Suguna Building, Avinashi Road
Coimbatore District. ... 3rd Respondent/Appellant

-vs-

1. Mr. Venkatachalam
S/o. Kittusamy
Koil Thottam
Goundampalayam
Palladam
Coimbatore District. ...Petitioner/1st Respondent
2. Mr. Paramasivam
S/o. Rangasamy
No: 4 A Palanigounder Street
Panapalayam, Palladam,
Coimbatore District. ...Respondent I /2nd Respondent
3. Mr. Navaneethakrishnan
S/o. Subbaiya Thevar
No: 7 Bhagvath Singh Street
Velandipalayam
Coimbatore District. RespondentsII/3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.12.2005 passed in M.C.O.P. No. 846 of 2003 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), FTC - V, Tirupur.

For appellant

: Mr.J. Chandran

J U D G E M E N T

The Oriental Insurance Company is the appellant in the above appeal challenging the award and decree dated 19.12.2005 passed in M.C.O.P. No. 846 of 2003 on the file of the Motor Accidents Claims Tribunal (Addl. District Judge), FTC-V, Tirupur.

2. It is a case of injury. The accident occurred on 26.03.2002. One Venkatachalam, 1st respondent herein, is the claimant. According to him, on 26.03.2002, at about 20.00 hours, he was riding his bicycle in front of Bharath Gas Company, Panappalayam to Nallur Road on west to east direction. At that time, a TVS Scooty bearing Registration NO: TN 38 F 3292 being driven in a negligent manner dashed against the claimant. In the impact, the claimant fell down and sustained injuries in his face, shoulder, right leg, left hand and all over his body. He was admitted in Rajeswari Nursing Home, Palladam, for treatment and he lost his two teeth. According to the claimant, he was aged 32 years at the time of accident and was earning a sum of more than Rs.3,000/- per month by working in a sizing mill. The claimant filed the claim petition claiming a sum of Rs. 2,00,000/- as compensation from the respondents before the Tribunal, the 1st respondent being the rider of the scooty; the 2nd respondent being the owner and the 3rd respondent being the insurer of the offending vehicle.

3. In support of the claim, the claimant had examined himself as P.W.1 and the Doctor as P.W.2 and marked Exs.P-1 to P-7, the details of which are as follows:-

Ex.P-1 is the copy of First Information Report

Ex.P-2 series are the medical bills

Ex.P-3 is the copy of the wound Certificate

Ex.P-4 is the x-ray

Ex.P-5 is the photograph of the claimant

Ex.P-6 is the disability certificate

Ex.P-7 is the x-ray

On the side of the respondents before the Tribunal one witness was examined as R.W.1 and a copy of the First Information Report filed before the Judicial Magistrate, Tirupur was marked as Ex.R.1

4. Before the Tribunal, the appellant filed counter statement disputing the very accident itself as claimed by the claimant. The appellant also contended that the compensation claimed is on the higher side.

5. The Tribunal considering the material documents and the fact that the appellant had not conducted any investigation to prove that the accident did not occur in the manner as claimed by the claimant, came to the conclusion that the accident had occurred due to the rash and negligent driving of the Scooty by its rider. By considering the evidence of P.W.2, the doctor, who examined the injured claimant, the Tribunal has come to conclusion that the claimant had suffered various injuries in his face, teeth, etc. Considering all the factors, the Tribunal had granted a sum of Rs. 50,000/- as compensation under the following heads :-

1	Towards the injury and disability suffered	Rs. 25,000/-
2	Towards pain & suffering	Rs. 5,000/-
3	Towards Medical expenses	Rs. 15,000/-
4	Towards nutritious food	Rs. 5,000/-
	Total	Rs. 50,000/-

6. Further, in case of any default in deposit of the amount within two months as awarded above, the Tribunal directed the insurer to pay default interest at the rate of 12% instead of 9%.

7. The finding of negligence on the part of the rider of the two wheeler, who is responsible for the accident and the injury suffered by the claimant and consequential liability fixed on the appellant insurance company to compensate the claimant is not seriously disputed by the learned counsel for the appellant in this appeal and the same is confirmed. The learned counsel for the appellant contended that the quantum of compensation granted by the Tribunal is on the higher side and the same should be reduced.

8. On perusal of the records produced before it, it is seen that the claimant had examined P.W.2 - the Doctor, who treated him to support his claim that he had suffered various

injuries in his face in the accident. Before the Tribunal, though the claimant claimed a sum of Rs. 2,00,000/- as compensation under various heads, considering the evidence brought forth, the Tribunal thought it fit to grant a sum of Rs.50,000/- only as compensation.

9. While going through the award of the Tribunal, this Court is not inclined to interfere with the quantum of compensation for the simple reason that the Tribunal has not granted any enormous sum as compensation and had granted only a meagre sum of Rs.50,000/- in total as compensation. Further, no amount was granted towards attender charges and transportation charges.

10. The default interest granted at 12% cannot be justified as per the decision of the Apex Court in National Insurance Co. Ltd., - vs. - Keshav Bhadur and others reported in 2004 ACJ 648.

11. In the result, the the Civil Miscellaneous Appeal is partly allowed as follows:-

- (1) The award in a sum of Rs.50,000/- granted by the Tribunal is confirmed.
- (2) The interest granted by the Tribunal at 7.5% per annum is also confirmed.
- (3) The Default interest granted at 9% per annum is set aside.
- (4) By order dated 2.8.2006, the appellant was directed to deposit entire award amount including interest and cost.
- (5) Hence, the claimant is permitted to withdraw the entire award amount with interest and cost.
- (6) Connected miscellaneous petition is closed.
- (7) There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

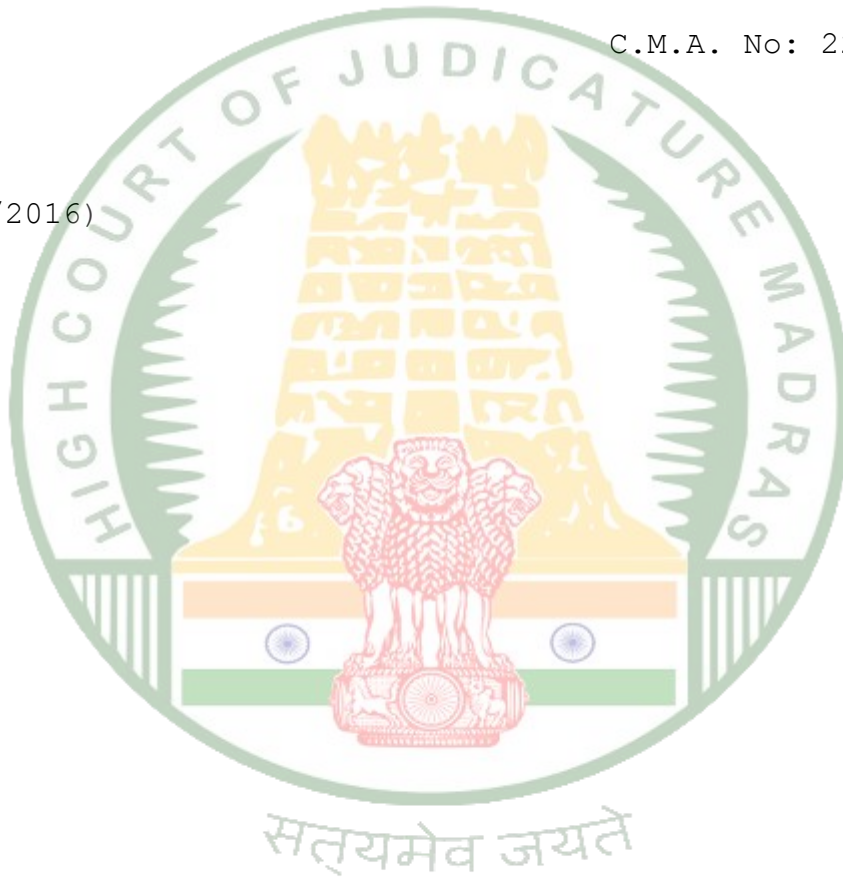
To

The Presiding Officer
Motor Accidents Claims Tribunal
(Additional District Judge)
Fast Track Court No: 5
Tirupur.

+lcc to Mr.J.Chandran, Advocate, S.R.No.45617

C.M.A. No: 2250 of 2006

ad(CO)
srg(12/02/2016)



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