



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Civil Miscellaneous Miscellaneous Appeal No.44 of 2006
and
C.M.P.No.168 of 2006

The Oriental Insurance Co. Ltd.,
Vellore. ... Appellant/3rd Respondent
vs.

1.S.Nataraj Respondent-I/Petitioner
2.M.Ravi Respondent-II/Respondent-I
3.S.Jayarama Chettiyar Respondent-III/Respondent-II

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 16.09.2003 passed in M.C.O.P.No.200 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Bhavani.

For Appellant : Mr.J.Chandran

For Respondents : Mr.P.M.Duraisamy - R1

J U D G M E N T

The Oriental Insurance Co. Ltd. is the appellant in the above appeal challenging the award and decree dated 16.09.2003 passed in M.C.O.P.No.200 of 2001 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Bhavani.

2. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.P.M.Duraisamy, learned counsel appearing for the first respondent.

3. It is a case of injury. The brief facts of the case are as follows:- The accident in this case happened on 31.12.2000 at about 6.30 a.m. When the claimant, aged about 41 years, was standing on the N.H.47 in front of his service station, namely, Natrayan Service Station, near Periyavaikkalmedu, Nasiyanoor, a lorry bearing Registration No.TN59-Z-1653 came in a rash and negligent manner from behind and hit the claimant as well as the lorry parked on the extreme western side. Due to this, the claimant sustained multiple



injuries and he was admitted in L.K.M.Hospital, Erode for treatment. For the injuries sustained and for the permanent disability, the claimant has filed a claim for compensation in a sum of Rs.3,00,000/- stating that the claimant was earning a sum of Rs.4,000/- per month at the time of accident.

4. The said Original Petition was contested by the appellant insurance company contending that the accident was not caused due to rash and negligent driving of the lorry bearing Registration No.TN-59-z-1653 driver. The claimant crossed the road without observing traffic rules and invited the accident.

5. Before the Tribunal, the claimant was examined as P.W.1 and Dr.Thamburaj, who gave the disability certificate, was examined as P.W.2. Exs.P-1 to P-12 were marked. On the side of the respondents, no document was filed and no witness was examined.

6. Considering the oral and documentary evidence, the Tribunal granted the following amounts as compensation with 9% interest per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs.1,26,000 /-
2	For pain and suffering	Rs. 15,000/-
3	For Extra nutrition	Rs. 10,000/-
4	Transport expenses	Rs. 1,000/-
5	Medical expenses	Rs. 22,471/-
6	For taking x-ray	Rs. 100/-
	Total	Rs.1,74,571 /-

7. The finding of negligence on the part of the driver of the lorry insured with the appellant insurance company, who is responsible for the accident and consequential liability fixed on the owner of the vehicle and the appellant insurance company to compensate the claimants is not seriously disputed by the learned counsel appearing for the appellant. The only point canvassed by the learned counsel for the appellant is on the quantum of compensation.



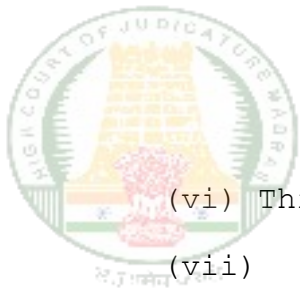
8. The Tribunal, taking note of the disability at 35% granted compensation at Rs.1,26,000/-, which is on the higher side. In the instant case, the claimant was running an automobile service station. The nature of disability to the claimant could not have caused permanent loss to the claimant. Hence, the amount granted by the Tribunal towards disability is excessive. For the disability at 35%, considering the age and occupation of the claimant, the amount fixed by the Tribunal is reduced to Rs.70,000/-. However, the compensation granted by the Tribunal on other heads are on the lower side. Further, no amount was granted towards attender charges. Accordingly, the award of the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.1,26,000/-	Rs. 70,000/-
2	For pain and suffering	Rs. 15,000/-	Rs. 20,000/-
3	For Extra nutrition	Rs. 10,000/-	Rs. 15,000/-
4	Transport expenses	Rs. 1,000/-	Rs. 5,000/-
5	Medical expenses	Rs. 22,471/-	Rs. 22,471/-
6	For taking x-ray	Rs. 100/-	Rs. 100/-
7	Attender charges		Rs. 10,000/-
	Total	Rs.1,74,571/-	Rs.1,42,571/-

9. There is no dispute in respect of the interest granted by the Tribunal at 9% per annum, as the accident happened in the year 2000.

10. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

- (i) The award of the Tribunal is reduced to Rs.1,42,571/- from Rs.1,74,571/-
- (ii) The interest granted by the Tribunal at 9% per annum is confirmed.
- (iii) It is stated that the entire award amount has been deposited and the claimant has withdrawn 50% of the said amount.
- (iv) The claimant is now permitted to withdraw the balance award amount along with accrued interest as ordered by this Court as above.
- (v) The appellant insurance company is at liberty to withdraw the balance amount after adjusting the award amount.



(vi) There will be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Sub-Judge,
(Motor Accidents Claims Tribunal)
Chennai.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.J.Chandran, Advocate, sr.45643
+1 cc to Mr.P.M.Duraiswamy, Advocate, sr.44747

C.M.A.No.44 of 2006
& C.M.P No.168 of 2006

bvr co
kra 04/11/2015