

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.183 of 2016
and
C.M.P.No.1650 of 2016

The Oriental Insurance Co. Ltd.,
Oriental House No.115, Broadway Road,
Chennai 600 108. ... Appellant/Respondent 2.

Versus

1.Ravi
2.Mahendran ... Respondents/Petitioner/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against decree and judgment dated 1st day of June 2015, made in M.C.O.P.No.5109 of 2011, on the file of Motor Accident Claims Tribunal (VI Court of Small Causes) of Madras.

For Appellant : Mr.S.Manohar

For Respondents : Mr.Terry Chella Raja for R1

JUDGMENT

(Judgment of the Court was made by M.SATHYANARAYANAN,J.)

By consent, this appeal is taken up for final disposal.

2. The second respondent/Insurance Company in M.C.O.P.No.5109 of 2011 on the file of Court of Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai, aggrieved by the quantum of compensation awarded, vide award dated 01.06.2015, has filed this appeal.

3. The facts necessary for the disposal of this appeal are as follows:

For the sake of convenience, the array of parties as referred in the Tribunal is adopted here also.

The first respondent/claimant in the claim petition would aver that on 28.01.2011, at about 6.30 hrs he was riding his motorcycle bearing Registration No.TN-05-4356 and while he was nearing car junction at Vandavasi Taluk, a lorry bearing Registration No.TN-09-D-6507, belonging to the first respondent viz., Mahendran, insured with the appellant/second respondent driven in a rash and negligent manner, dashed against the appellant herein and as a consequence, he sustained grievous injuries and hence, came forward to file the M.C.O.P.No.5109 of 2011, claiming a compensation of Rs.41,50,000/-.

4. The appellant/second respondent has filed the counter affidavit denying the manner of accident as well as rash and negligent driving on the part of the driver of the lorry and further submitted that the said accident was caused only on the ground of rash and negligent act of the petitioner and not on the rash and negligent driving of the driver of the lorry and therefore, he cannot be mulcted with any indemnity and prays for dismissal of the claim petition.

5. During the course of enquiry, the claimant apart from examining himself as P.W.1, also examined P.Ws.2 to 4 and Exs.P-1 to P-15 were marked on behalf of the claimant. On the side of the respondents, no witnesses were examined and no exhibits were marked. The Tribunal, on consideration of oral and documentary evidence, awarded the compensation of Rs.25,15,200/- with interest at the rate of 7.5% p.a. from the date of petition till date of deposit and aggrieved by the quantum, the present appeal is filed.

6. The learned counsel appearing for the appellant/Insurance Company has drawn the attention of this Court to the impugned judgment and would submit that the Tribunal has awarded an exorbitant sum of Rs.1,50,000/- towards loss of amenities and enjoyment of life and also awarded a sum of Rs.1,50,000/- towards pain and sufferings. Therefore, the amount awarded under the said heads require modification. Further it is the submission of the learned counsel appearing for the appellant/Insurance Company that a sum of Rs.2,00,000/- was awarded towards future medical expenses with instrument. It also requires modification, as the nature of future treatment has not been specifically enumerated and therefore, the amount awarded under the said head also requires modification and prays for appropriate orders.

7. The learned counsel appearing for the appellant/Insurance Company has further drawn the attention of this Court to the impugned judgment and would submit that the Tribunal has awarded an exorbitant sum of Rs.1,50,000/- towards non-pecuniary damages and further added that a sum of Rs.1,50,000/- has been awarded towards compensation for pain and

suffering and therefore, the award amount under the said heads require deduction and prays for appropriate orders.

8. Per contra, learned counsel appearing for the first respondent/claimant would vehemently contended that the Tribunal, on a thorough consideration of oral and documentary evidence and taking into consideration the physical discomfort and mental agony undergone by the petitioner and his family, has rightly awarded a sum of Rs.25,15,200/- with interest at the rate of 7.5% per annum as against the claim of Rs.41,50,000/- and this Court in exercise of appellate jurisdiction may not interfere with the well considered findings rendered by the Tribunal and prays for dismissal of this appeal with costs.

9. This Court has carefully considered the rival submissions and also perused the materials before this Court.

10. The primordial question arises for consideration is whether the quantum of compensation awarded by the Tribunal requires modification or not?

11. This Court has gone through the impugned judgment and considering the evidence of P.W.3, Dr.Thiyagarajan, who assessed the disability at 60% for injury sustained, the Tribunal has arrived at a compensation. As rightly contended by the learned counsel appearing for the first respondent/claimant that the Tribunal though awarded a sum of Rs.1,50,000/- towards loss of amenities and enjoyment of life, also awarded a sum of Rs.1,50,000/- towards compensation for pain and sufferings, the award of compensation in respect of loss of amenities and enjoyment of life as well as compensation for pain and sufferings requires reduction. Accordingly, instead of awarding a sum of Rs.1,50,000/- for the above said two heads, a sum of Rs.75,000/- is awarded to meet the ends of justice. Insofar as the award of compensation of Rs.2,00,000/- towards future medical expenses with instruments is concerned, it has not been clearly spelt out as to the nature of future medical expenses and further surgery to be undergone by the appellant in the event of medical advice being to be given. Therefore, as against a sum of Rs.2,00,000/- awarded under the future medical expenses with instruments, a sum of Rs.1,00,000/- is to be awarded. The amount awarded under the other heads are very reasonable and hence, the same are confirmed.

12. In the light of the said modification, this Court is of the opinion that the first respondent/claimant is entitled to a sum of Rs.22,65,200/- (Rupees Twenty Two Lakhs Sixty Five Thousand and Two Hundred only) as against the compensation of Rs.41,50,000/- (Rupees Forty One Lakhs and Fifty Thousand only) awarded by the Tribunal. Insofar as, future medical expenses is concerned, wherein, this Court has modified to a sum of

Rs.1,00,000/- and the claimant is not entitled to get any interest.

13. In the result, the civil miscellaneous appeal is partly allowed and the award and decree passed in M.C.O.P.No.5109 of 2011 on the file of Court of Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai, is modified and the first respondent/claimant is entitled to get interest at the rate of 7.5% p.a., on a sum of Rs.21,65,200/- from the date of petition till the date of full and final settlement.

14. The appellant/Insurance Company is directed to deposit the modified compensation amount, less the amount already deposited if any, within a period of eight weeks from the date of receipt of copy of judgment and on such deposit, it is open to the first respondent/claimant to withdraw the same. It is also open to the appellant/Insurance Company to pay the above compensation and recover the same from the second respondent. No costs. Consequently, connected miscellaneous petition is closed.

vsm

-s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
(VI Court of Small Causes), Chennai.

+ 1 cc to Mr.S.Manohar, Advocate, SR 8638

+ 1 cc to M/s.M.Malar, Advocate, SR8435

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