

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2763 of 2014

and

M.P.No.1 of 2014

The Oriental Insurance Co.Ltd
No.281, Cross Cut Road
P.B.No.2907, Gandhipuram
Coimbatore 641 012

... Appellant/2nd Respondent

Vs.

1.D.Premnath ... 1st Respondent/Petitioner

2.R.Saminathan ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree in M.C.O.P.No.997 of 2011, 09.04.2014 on the file of Motor Accidents Claims Tribunal, II Court of Small Cause, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.N.Manokaran for R1
R2-Service awaited.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Insurance Company is on appeal challenging the award dated 09.04.2014 passed in M.C.O.P.No.997 of 2011 on the file of the Motor Accidents Claims Tribunal (II Court of Small Cause), Chennai.

2. Heard Mr.N.Vijayaraghavan, learned counsel for the appellant and Mr.N.Manokaran, learned counsel for the first respondent.

3. It is a case of injury. On 13.9.2010 at about 1.00 pm, the claimant D.Premnath aged 32 years riding his motor bike Yamaha bearing registration No.TN 74 P 351 after finishing his work at Valliyoor to his native place at Thovalai along with his co-workers at Kavalkinaru Nagerkoil Main Road, near Aralvaimozhi Muthu Magar, Junction in East to West direction. At that time a Tempo bearing Registration No. TN 39 AQ 3506 driven by its driver in West to East direction in a rash and negligent manner, hit the motor bike of the claimant. As a result of which, the claimant sustained the following injuries: -

"RTA with head injury (SDH + SDH) crush injury left wrist fracture of Zycova communitated fracture of left palella and fractural grievous injury all over the body)."

Stating that he was earning a sum of Rs.400/- daily and overtime wages and batta at Rs.200/- daily, filed the claim petition praying compensation in a sum of Rs.20,00,000/-.

4. The claim was resisted by the appellant Insurance Company by filing counter denying the allegations made by the claimants. It is contended that the compensation claimed in the claim petition is excessive.

5. In support of the claim, before the Tribunal, the claimant was examined as P.W.1. Dr.K.J.Mathiazhagan and Dr.M.Saravana Bavanantham were examined as P.Ws.2 and 3 respectively. Exs.P.1 to P.17 were marked and the details of which are as follows:-

Sl.No.	Exhibits
Ex.P.1	Copy of F.I.R., in Cr.No.406/2006 registered at Aralvoimozhi Police Station
Ex.P.2	Copy of Rough sketch
Ex.P.3	Copy of M.V.I., report for 1 st respondent's vehicle.
Ex.P.4	Medical bills
Ex.P.5	Discharge summary
Ex.P.6	Discharge summary
Ex.P.7	Discharge summary
Ex.P.8	Discharge summary

Sl.No.	Exhibits
Ex.P.9	Discharge summary
Ex.P.10	Medical Prescriptions
Ex.P.11	Salary Certificate
Ex.P.12	Copy of driving licence of the petitioner
Ex.P.13	X ray film
Ex.P.14	Disability certificate
Ex.P.15	Disability certificate
Ex.P.16	Treatment Charges Receipt
Ex.P.17	Advance receipts

6. On the side of the Appellant Insurance company, no witness was examined and no exhibit was marked.

7. The Tribunal, on an analysis of evidence and the materials placed before it, held that the accident had occurred solely due to the rash and negligent driving of the tempo driver of the second respondent herein and awarded compensation, fastening liability to pay compensation on the appellant. Aggrieved against the said award, the appeal is filed by the appellant Insurance Company.

8. The finding of negligence on the part of the tempo driver of the second respondent herein, who is responsible for the accident and consequential liability fixed on the appellant Insurance company to compensate the claimant is not seriously disputed and such finding is confirmed. The appeal is canvassed mainly challenging the quantum of compensation.

9. It is stated that the injured was working as mason and was earning Rs.400/- per day besides batta at Rs.200/- per day. Ex.P-11 is the salary certificate. The Tribunal considering the present Mason labour charges and also present day hike in the cost of the commodities, fixed the income of the injured at Rs.7,000/- per month. It is stated that the injured took treatment for continuous period of 40 days in 5 spells. Considering the treatment taken by the injured the Tribunal granted compensation at Rs.84,000/- towards loss of earning for a period of twelve months. Considering the disability certificate, the Tribunal taken the disability at 20%, for which the Tribunal granted a sum of Rs.40,000/- towards disability. However, the Tribunal observed that the injured cannot attend to his avocation of mason at the least his avocation would get affected to an extent of 40%. By adopting multiplier 16, the

Tribunal granted a sum of Rs.5,37,600/- towards loss of earning capacity. In addition, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum.

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income for 12 months	Rs. 84,000/-
2	Transportation	Rs. 20,000/-
3	Extra nourishment	Rs. 15,000/-
4	Damage to clothes	Rs. 1,000/-
5	Medical expenses	Rs. 3,48,500/-
6	Mental agony to the petitioner	Rs. 1,00,000/-
7	Loss of Amenities of life	Rs. 1,00,000/-
8	Pain and suffering	Rs. 1,50,000/-
9	Disability of 20% at the rate of Rs.2000/- per disability	Rs. 40,000/-
10	Loss of earning capacity Rs.7000x12x16x40%	Rs. 5,37,600/-
	Total compensation is fixed at	Rs. 13,96,100/-

10. The focus of the appellant in this appeal is primarily with regard to the quantum of compensation and not with regard to the liability. According to the learned counsel for the appellant/Insurance Company, the first respondent had taken treatment as inpatient for 40 days and undergone 5 surgeries and hence, towards Attender Charges, a sum of Rs.5,000/- could be added to the Award, however, towards loss of amenities, a sum of Rs.50,000/- could only be awarded instead of Rs.1,00,000/- as awarded by the Tribunal. He further argued that a sum of Rs.1,00,000/- awarded towards Mental Agony by the Tribunal is not justified and hence, the same could be deleted. He also contended that taking into account the medical bills, a sum of Rs.3,48,400/- only could be awarded instead of Rs.3,48,500/- as granted by the Tribunal.

11. We perused Exhibits and the award of the Tribunal. The calculation now put forth by the learned counsel for the appellant/Insurance company towards expenses for medical treatment, is borne out clearly by record. In our considered view, the modifications sought for by the learned counsel for the appellant/Insurance company is in accordance with the well settled principles. Further, the Award in respect of the other heads and amounts cannot also be said to be on the higher side.

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this court
1	Loss of income for 12 months	---	Rs. 84,000/-
2	Transportation	Rs. 20,000/-	Rs. 20,000/-
3	Extra nourishment	Rs. 15,000/-	Rs. 15,000/-
4	Damage to clothes	Rs. 1,000/-	Rs. 1,000/-
5	Medical expenses	Rs. 3,48,500/-	Rs. 3,48,400/-
6	Mental agony to the petitioner	Rs. 1,00,000/-	
7	Loss of Amenities of life	Rs. 1,00,000/-	Rs. 50,000/-
8	Pain and suffering	Rs. 1,50,000/-	Rs. 1,50,000/-
9	Disability of 20% at the rate of Rs.2000/- per disability	Rs. 40,000/-	Rs. 40,000/-
10	Loss of earning capacity Rs.7000x12x16x40%	Rs. 5,37,600/-	Rs. 5,37,600/-
11	Attender Charges	---	Rs. 5,000/-
	Total compensation is fixed at	RS.13,96,100/-	Rs.12,51,000/-

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is reduced to Rs.12,51,000/- from Rs.13,96,100/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) This Court by order dated 18.11.2015 directed the appellant insurance company to deposit the entire award amount along with accrued interest and costs. Learned counsel appearing for the appellant submits that entire award amount has been deposited before the Tribunal.
- (iv) The claimant is permitted to withdraw the award amount as ordered by this Court as above.
- (v) The appellant insurance company is at liberty to withdraw the excess amount deposited before the Tribunal.

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

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

nvsri

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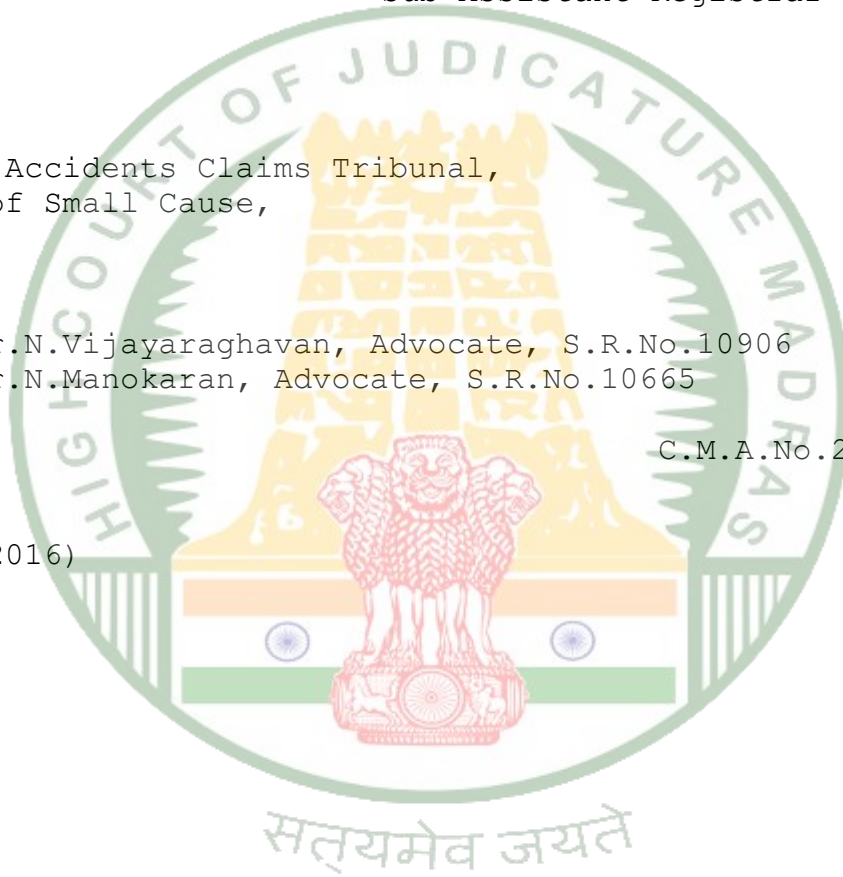
The Motor Accidents Claims Tribunal,
II Court of Small Cause,
Chennai.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.10906

+1cc to Mr.N.Manokaran, Advocate, S.R.No.10665

C.M.A.No.2763 of 2014

LRS (CO)
CA(30/03/2016)



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