

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.2197 of 2013

Oriental Insurance Company Ltd.,
rep. by its Manager,
PB No.59, Mayara Complex,
Avantapur.

... Appellant/2nd Respondent.

vs.

1. N.Ramachandran1st Respondent/Claimant.

2. Devaraj 2nd Respondents/1st Responent.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.02.2013 made in M.C.O.P.No.219 of 2007 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge) at Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For 1st Respondent : Mr.M.Selvam

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the 1st respondent/claimant.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (Principal Sub Judge), Krishnagiri vide judgment dated 25.02.2013 in M.C.O.P.No.219 of 2007, the Insurance Company has come up with the present appeal.

3. This is a case of accident resulting in grievous injuries to the claimant, N.Ramachandran. On 07.06.2005, when the claimant was riding his Yamaha Motor Cycle bearing Registration No.TN 24 Z 2734 with his friend Ravi from Madhampatty towards Hosur, at Thorapalli, near Trinity Food Company and Anjappa land, about 5.30 p.m., a Lorry bearing Registration No.KA 03 B 5724 belonging to the 2nd respondent

herein and insured with the appellant Insurance Company, driven in a rash and negligent manner came from the opposite direction and dashed against the motorcycle, due to which, the claimant sustained the following injuries:

- (i) Right parietal Subdural Haemarrage with right temporal linear fracture
- (ii) left parietal haemorrhage
- (iii) right side middle shift fracture
- (iv) right fronto temporal S.D.H. with contusion craniotomy alone
- (v) Bleeding from right ear
- (vi) multiple injuries all over the body

Immediately, the claimant was admitted at General Hospital, Hosur; thereafter admitted at NIMHANS Hospital, Bangalore and then underwent treatment in various private hospitals. For the injuries sustained, the claimant filed a claim petition in M.C.O.P.No.219 of 2007 seeking a sum of Rs.30,00,000/- as compensation.

4. The Insurance Company resisted the claim petition before the Tribunal on the ground that the claimant itself did not possess valid driving licence at the time of accident and that the compensation claimed by him is exorbitant.

5. Before the Tribunal, in support of the claim, the claimant, viz. Ramachandran was examined as P.W.1; one Ravi was examined as P.W.2; one Dr.Suresh was examined as P.W.3 and Exs.A1 to A21 were marked, the details of which are as follows:

Ex.A-1	FIR
Ex.A-2	Wound Certificate
Ex.A-3	NIMHANS Emergency Case Record
Ex.A-4	Discharge Summary
Ex.A-5	Insurance Policy
Ex.A-6	Petitioner I.D. Card
Ex.A7	B.A. Degree Certificate
Ex.A8	M.A. Degree Certificate
Ex.A9	Transfer Certificate of Law College
Ex.A10	LLB Statement of Marks
Ex.A-11	CT Scan Report

Ex.A-12	Ultra Scan Report
Ex.A-13	CT Scan Report
Ex.A-14	CT Scan Report
Ex.A-15	Scan Picture
Ex.A-16	Medical Bills
Ex.A17	D.L. of Lorry Driver
Ex.A18	Insurance Policy of Two Wheeler
Ex.A19	R.C. of Lorry
Ex.A20	Ashok Leyland Company Letter
Ex.A21	Disability Certificate

6. On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

7. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P1-F.I.R., held that the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No.KA 03 B 5724 and awarded a sum of Rs.22,49,524/- as compensation to the claimant with interest at 6% per annum from the date of filing of the claim petition till the date of deposit, under the following heads:

Loss of income (Rs.10,000/- x 12 x '18' x 74/100)	Rs.15,98,400.00
Pain and suffering	Rs. 25,000.00
Medical Bills	Rs. 5,21,124.00
Future Treatment	Rs. 25,000.00
Attender Charges	Rs. 10,000.00
Transportation	Rs. 10,000.00
Extra Nourishment	Rs. 10,000.00
Loss of Marital Prospects	Rs. 50,000.00
Total compensation	Rs.22,49,524.00

Challenging the said award that it is on the higher side, the Insurance Company has come up with the present appeal.

8. Learned counsel for the appellant/Insurance Company would mainly contend that the Tribunal erred in fixing the percentage of disability of the claimant at 74%, which is highly disproportionate to the injuries sustained by him. It is also his contention that the Tribunal erred in fixing the age of the

claimant as 30 years on the date of accident, when the Wound Certificate (Ex.A2) reveals the age of the claimant as 50 years and the Medical Record (Ex.A3) reveals his age as 37 years.

9. In reply, learned counsel appearing for the 1st respondent/claimant would submit that the Tribunal has awarded just and reasonable compensation taking into account the disability sustained by the claimant and sought dismissal of the appeal.

10. We have given careful consideration to the submissions made by the learned counsel on either side and gone through the materials available on record.

11. The age of the claimant and the disability assessed by the Doctor are the aspects which are mainly disputed in this appeal.

12. From the records, it is seen that the injured claimant is a Law Graduate. Though the Hospital Case Report marked vide Ex.A3 shows the age of the claimant as 37 years, the Tribunal has fixed the age of the claimant at the time of accident as 30 years, taking into account the Transfer Certificate issued by the Law College vide Ex.A9 and the LLB Statement of Marks vide Ex.A10. When there is valid proof to substantiate the age of the claimant, this Court has no doubt in it and the same is confirmed. As regards the percentage of disability assessed by the Doctor, this Court is of the view that it is certainly on the higher side. No doubt, the injuries sustained by the claimant are grievous in nature. He has suffered fractures and head injury, which will certainly affect his career. In injury cases, percentage of disability is assessed mainly based on the severity of injuries. In the case on hand, there is no amputation. Hence, on a perusal of the medical records of the claimant and the nature of injuries sustained by him, this Court feels it appropriate to fix the permanent disability sustained by the claimant at 50%.

13. The Tribunal has fixed the monthly income of the claimant at Rs.10,000/-, which in our view, is reasonable and it requires no interference. Thus, fixing the permanent disability of the claimant at 50%, the compensation awarded towards Loss of income is modified and arrived at Rs.10,80,000/- (Rs.10,000/- x 12 x '18' x 50/100).

14. Taking note of the injuries sustained by the claimant, we feel that the compensation awarded under the heads 'Pain and suffering', 'Future treatment', 'Attender charges', 'Transportation' and 'Extra Nourishment' are on the lower side and the same are enhanced. Hence, a sum of Rs.50,000/- is awarded towards 'Pain and Suffering'; Rs.75,000/- towards

'Future Treatment'; Rs.20,000/- towards 'Attender Charges'; Rs.20,000/- towards 'Transportation' and Rs.30,000/- towards 'Extra nourishment'.

15. Further, we feel that a sum of Rs.50,000/- awarded towards 'Loss of Marital Prospects' is on the lower side and therefore, the same is enhanced to a sum of Rs.1,00,000/-. Since the amount of Rs.5,21,124/- awarded by the Tribunal towards 'Medical Bills' is supported by valid proof marked vide Ex.A16, the same requires no interference.

16. In fine, the quantum of compensation of a sum of Rs.22,49,524/- awarded by the Tribunal is modified and the 1st respondent/claimant is entitled to a sum of Rs.18,96,124/- (Rupees Eighteen Lakhs Ninety Six Thousand One Hundred and Twenty Four only) as compensation. The interest fixed by the Tribunal at 6% per annum from the date of filing the claim petition till the date of deposit is confirmed. Break-up details of the revised award are as under:

Heads	Award of the Tribunal	Revised Award of this Court
Loss of income	Rs.15,98,400.00	Rs.10,80,000.00
Pain and suffering	Rs. 25,000.00	Rs. 50,000.00
Medical Bills	Rs. 5,21,124.00	Rs. 5,21,124.00
Future Treatment	Rs. 25,000.00	Rs. 75,000.00
Attender Charges	Rs. 10,000.00	Rs. 20,000.00
Transportation	Rs. 10,000.00	Rs. 20,000.00
Extra Nourishment	Rs. 10,000.00	Rs. 30,000.00
Loss of Marital Prospects	Rs. 50,000.00	Rs. 1,00,000.00
Total compensation	Rs.22,49,524.00	Rs.18,96,124.00

17. The appellant/Insurance Company is directed to deposit the entire award amount, if not already deposited, along with accrued interest to the credit of M.C.O.P.No.219 of 2007 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge), Krishnagiri, within a period of six (6) weeks from the date of receipt a copy of this judgment. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the

amount, as per the award. It is also made clear that the award amount shall be paid to the claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected M.P.No.1 of 2013 is closed.
aeb

s/d-
Assistant Registrar(AS)

True Copy

Sub-Assistant Registrar

To:

The Motor Accidents Claims Tribunal
Principal Sub Judge, Krishnagiri.

+ 1 cc to mr.N.Vijayaraghavan, Advocate SR 11247

+ 1 cc to Mr.T.Pappaiah Dharmarajan, Advocate SR 10959

vsn(co)
prk21/3

C.M.A.No.2197 of 2013



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