



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1026 of 2013

and

MP(MD)No.1 of 2013

The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
D.D.J. Centre, 1st Floor,
Opposite to Vadaseri Bus Stand,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

: Appellant/2nd respondent

Vs.

1.Sekar
2.Alwin

: 1st respondent/Petitioner
: 2nd respondent/1strespondent

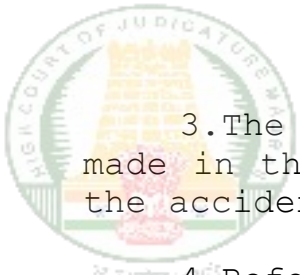
Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.44 of 2011, dated 29.12.2012 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil.

For Appellant : Mr.K.Bhaskaran
For 1st respondent : Mr.M.Gnanagurunathan
For 2nd respondent : No appearance

JUDGMENT

This appeal has been preferred by the Insurance Company, aggrieved by the award passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Nagercoil, in MCOP No.44 of 2011, dated 29.12.2012.

2.The first respondent, as claimant filed a petition claiming compensation of Rs.6,50,000/- alleging that on 09.06.2008 he was riding his motor cycle bearing registration No.TN-74-K-4556 from his house to Nagercoil along with his employee. At the time, a Bajaj Platinum Bike bearing registration No.TN-74-U-3030 came from the opposite direction in a high speed without following the traffic rules, dashed against the motor cycle of the claimant. In the accident, the claimant sustained grievous injuries all over the body and he was immediately taken to the Thiruviam Orthopaedic Hospital, Nagercoil, for treatment and thereafter, he took treatment in KIMS Hospital, Thiruvananthapuram at Kerala.



3.The appellant opposed the claim, refuting the allegations made in the claim petition. They have also disputed the manner of the accident and their liability to pay the compensation.

4.Before the Tribunal, the claimant examined himself as PW1 and in his evidence, he has deposed in tune with the allegations made in the claim petition and also marked Ex.P1 first information report, Ex.P2 observation mahazar, Ex.P4 report of the Motor Vehicle Inspector, Ex.P5 site map, Ex.P8 copy of the charge sheet and Ex.P9 judgment of the criminal court. The tribunal, while disbelieving the evidence of RW1 and RW2 and based on the evidence of the claimant, has rightly come to the conclusion that the accident occurred only due to the negligence of the offending vehicle driver. The contention of the appellant that the driver of the offending vehicle was not having valid driving licence, was disbelieved by the tribunal.

5.PW1 deposed that he sustained grievous injuries on the right left knee, left hand, right rear and on the windpipe and he was having breathing problem due to the injuries sustained in the nasal cavity, for which he was taking treatment at Thiraviyam Hospital at Nagercoil and thereafter, in KIMS Hospital, at Thiruvananthapuram as inpatient. Ex.P3 is the wound certificate. Ex.P8 is the charge sheet. Ex.P6 would show that the claimant was taking treatment as inpatient in Thiraviyam Hospital for 7 days and in KIMS Hospital on two spells for 38 days, totally 45 days. PW2 corroborated the evidence of PW1. The tribunal, after analysing the evidence, both oral and documentary has awarded Rs.40,000/- for grievous injuries; Rs.10,000/- for pain and sufferings; Rs.5,000/- towards extra nourishment; Rs.5,000/- for transportation; Rs.3,30,890/- towards medical expenses, based on the medical bills Exs.P7 and P10; Rs.15,000/- loss of amenities and Rs.6,750/- towards loss of income during treatment period. In total, the tribunal has awarded **Rs.4,12,640/-** with interest @ 7.5% p.a. The compensation awarded by the Tribunal is fair and reasonable. This court does not find any merit in this appeal.

6.In the result, this appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire amount without filing any formal petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)



To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Nagercoil.

+1cc to Mr.K.BHASKARAN, ADVOCATE, SR NO 39460

+1CC TO MR.M.GNANAGURUNATHAN, ADVOCATE, SR NO 39539

Judgment made in

CMA (MD) No.1026 of 2013
26.07.2016

SMA/SKS-RR/04.01.2017:3P/4C