



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2017
CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

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C.M.A(MD)No.1572 of 2011
and
M.P.(MD)No.1 of 2011

The Branch Manager,
Oriental Insurance Company Limited,
Pudukkottai.

... Appellant/ 2nd Respondent

Vs.

1.G.Ravikumar

... 1st Respondent/Petitioner

2.K.Rethinakumar

... 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award of Rs.7,76,750/- (Rupees Seven Lakhs Seventy Six Thousand Seven Hundred and Fifty only) passed in M.C.O.P.No.225/2008 dated 21.06.2011, on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Pudukkottai.

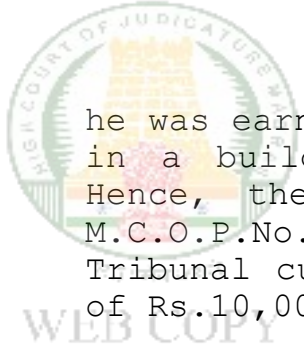
For Appellant	: Mr.K.Bhaskaran
For 1 st Respondent	: Mr.B.Prasanna Vinoth
For 2 nd Respondent	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Oriental Insurance Company Limited to set aside the award of Rs.7,76,750/- (Rupees Seven Lakhs Seventy Six Thousand Seven Hundred and Fifty only) passed in M.C.O.P.No.225/2008 dated 21.06.2011, on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Pudukkottai.

2. The brief facts of the case are as follows:

It is a case of fatal accident which took place on 08.11.2007 at about 07.45 p.m., While the first respondent was walking near the kannan Hospital, Pudukkottai, the second respondent's TVS Star City Motor Cycle bearing Registration No.TN-55-Q-8393, which was insured with the appellant Insurance Company came in a rash and negligent manner and dashed against the first respondent. As a result of which, the first respondent sustained severe head injuries and bone fractures. Immediately, he was taken to the Government Hospital, Pudukkottai for necessary medical treatment. Even though he took prolonged medical treatments in several hospitals, he has not fully recovered as before. At the time of accident, the first respondent/claimant was aged about 37 years and



he was earning a sum of Rs.4,000/- per month by working as a Manager in a building and Consultant Engineering associates at Chennai. Hence, the first respondent/claimant filed a claim petition in M.C.O.P.No.225 of 2008, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Pudukkottai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained.

3.The appellant/Oriental Insurance Company Limited had filed the counter affidavit and stated that, as per the policy the second respondent name is Rethinakumar. But Motor Vehicle Inspection Report and R.C. Stand in the name of Kumarrethinakumar. The first respondent is put to strict proof that whether the correct owner name is mentioned and has to be proved that he has involved in this accident and the real owner has to be impleaded. Hence, the appellant/United India Insurance Company prayed for dismissal of the claim petition.

4.The second respondent/first respondent remained ex-parte before the Tribunal.

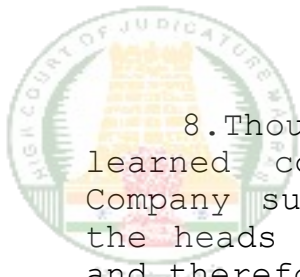
5.Before the Tribunal, on the side of the claimants, four witnesses viz., P.Ws.1 to 4 were examined and 22 documents viz., Exs.P.1 to P.22 were marked and on the side of the respondents, one witness viz.,R.W.1 was examined and one document viz., Ex.R.1 was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the TVS Star City Motor Cycle and therefore, directed the appellant/Oriental insurance Company to pay the compensation of Rs.7,76,750/- under the following heads:-

for permanent disability	
and loss of income	= Rs. 7,34,400/-
for pain and sufferings	= Rs. 5,000/-
for transport expenses,	
other medical expenses	
and extra nourishment	= Rs. 5,000/-
for medical expenses as per	
medical bills Ex.p13, Ex.p22	
and taxi fare bills Ex.p12.	= Rs. 32,350/-

Total	= Rs. 7,76,750/-

7.Against which, the appellant/Oriental Insurance Company filed this present appeal challenging the liability as well as quantum.



8. Though various grounds have been raised in this appeal, the learned counsel appearing for the appellant/Oriental Insurance Company submitted that the Tribunal has excessively awarded under the heads of nourishment, medical expenses and pain and sufferings and therefore, the award of the Tribunal warrants interference.

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9. Per contra, the learned counsel appearing for the first respondent/claimant submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant any interference.

10. Heard the submissions made on either side and perused the materials available on record.

11. From the evidence of P.W.1-claimant, it is seen that T.V.S star city motorcycle bearing Registration No. TN-55-Q-8393, which came behind the claimant had hit against him and thereby caused the accident. This aspect has been corroborated by the contents of the F.I.R and also the wound certificate and the Judgment of the Criminal Court would also prove the case of P.W.1, who is the victim himself. From Exs.P.1, P.4 and p.5, it is seen that the driver of the offending vehicle had appeared before the criminal Court and pleaded guilty to the charges levelled against him and paid fine. The Insurance Company did not disprove the facts admitted before the criminal Court and the motorcycle has hit the victim and it has been proved by oral and documentary evidence and no reliable evidence has been adduced by the Insurance Company to discuss about the corroboratory negligence. Even in the counter, no such plea had been taken by the Insurance Company. Even though the investigator's report has been marked as Ex.R.1, to prove the same no one was examined. In the absence of any evidence to rebut the manner and cause of the accident, the Tribunal has come to the conclusion that the case of the claimant is proved and the victim has suffered injury and sustained disability.

12. On a reading of the award granted by the Tribunal, it is seen that the injured claimant has sustained 90% permanent disability and there is no proof to show that there is functional disability. Hence, this Court is inclined to grant a sum of Rs.3,000/- (Rupees Three Thousand only) for 1% disability. The petitioner sustained 90% disability, accordingly, a sum of Rs.2,70,000/- (Rs.3000/-x90%) is awarded for 90% disability. However, the amounts awarded by the Tribunal under other heads to the injured claimant, in the considered opinion of this Court, are very meagre, considering the pain and sufferings undergone by the injured claimant, in respect of the grievous injuries sustained by him. Hence, this Court is inclined to enhance amount for pain and sufferings to a sum of Rs.1,00,000/-. Likewise, considering the facts and circumstances of the case, this Court is also inclined to increase the amount towards transportation to a sum of Rs.20,000/-. Considering the period of treatment taken by the injured claimant, this Court is inclined to grant a sum of Rs.50,000/- towards



attendant charges. The amount awarded by the Tribunal under other head viz., Medical expenses as per bills, stands unaltered. Accordingly, the award granted by the Tribunal is modified under the following heads:

for transport expenses	= Rs. 20,000/-
for pain and sufferings	= Rs. 1,00,000/-
for 90% disability	= Rs. 2,70,000/-
for medical expenses	= Rs. 32,350/-
for attendant charges	= Rs. 50,000/-

Total	= Rs. 4,72,350/-

13. In the result, the Civil Miscellaneous Appeal is partly allowed by modifying the award on the various heads. The appellant/Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. and costs of the MCOP, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any, and on such deposit being made, the injured claimant is permitted to withdraw the same, with accrued interests and costs after filing formal petition before the Tribunal. No Costs. Consequently, the connected M.P. (MD) No.1 of 2011 is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
cum Chief Judicial Magistrate,
Pudukkottai.

COPY TO:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.B.Prasanna Vinoth, Advocate SR.No. 85157

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M.P. (MD) No.1 of 2011
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VSG/CP

<https://hcservices.ecourts.gov.in/hcservices/>

JM/SV MMS/SAR 4/08.06.2018/4P/5C