

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1458 of 2006

and

C.M.P.No.6533 of 2006

The Oriental Insurance Co. Ltd.
No.251, Arcot Road, Vadapalani,
Chennai - 26.
3rd Party Claims Cell No.8,
UIL Building
Esplanade, Chennai - 108.

.... Appellant

..Vs..

1.A.Subramanian
2.S.Rajadurai

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in M.C.O.P.No.437 of 2003 dated 15.11.2005 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes, Chennai) insofar as against the award on the appellant.

For Appellant : Mr.M.Rajasekhar

For Respondents : No appearance

JUDGMENT

The appellant is the Oriental Insurance Company Limited. The first respondent/claimant filed M.C.O.P.No.437 of 2003 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes) Chennai, claiming compensation of Rs.2,00,000/- for the injuries sustained by him, in a road accident that took place on 02.08.2002.

2.The brief case of the first respondent/claimant is as follows. On 02.08.2002, at about 9.30 a.m., while the first respondent/claimant was traveling as a pillion rider in a

motorcycle Bajaj M-80 bearing Registration No.TN-09-M-8691 along Gangai Amman Koil Street, Lakshmipuram Junction, a cyclist suddenly crossed the road. Though the rider of the two wheeler applied sudden brakes, the claimant was thrown out of the two wheeler and sustained grievous injuries. Immediately, he was rushed to the Government Kilpauk Medical College Hospital, Chennai, where he was treated as an in patient for 12 days and as out patient for four months. A case was registered by R-4 Pondy Bazaar Police Station in Crime No.422/2002 on 22.09.2002 against the rider of the two wheeler. According to the claimant, he was working as a Wireman in Tamil Nadu Public Works Department earning a sum of Rs.5,016/- per month. It is also contended by him that the second respondent is the owner of the two wheeler and since the said two wheeler was insured with the appellant, both of them are jointly and severally liable to pay the compensation to him.

3. The second respondent herein did not appear before the tribunal and therefore, he was set exparte. The Oriental Insurance Company Limited, the present appellant, filed a counter and contested the claim petition.

4. After analysing the evidence on record, the learned IV Judge, Court of Small Causes, Chennai, awarded a compensation of Rs.69,220/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

5. Aggrieved over the orders passed by the tribunal, the Oriental Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 contending that since there was a delay of 39 days in registering the First Information Report, the tribunal should have dismissed the claim petition. They have also questioned the quantum of compensation awarded by the tribunal.

6. It is true that there is a delay of 39 days in registering the First Information Report. However, the Sub Inspector of Police , R-4 Pondy Bazaar Police Station, after completing the investigation has laid a final report Ex.P6 on 01.10.2002 before the concerned Magistrate. The tribunal after analysing the evidence on record has fixed the negligence on the part of the rider of the motorcycle Bajaj M-80 bearing Registration No.TN-09-M-8691, the second respondent herein, who had insured the said vehicle with the present appellant.

7. All the observations made by the trial Court are perfectly in order as regards the negligence aspect is concerned. No oral or documentary evidence is adduced on the

side of the appellant herein, to substantiate their contention that the accident did not take place as alleged by the claimant and that the second respondent was not negligent in riding his two wheeler. In the facts and circumstances of the present case, I hold that the rider of the two wheeler Bajaj M-80 bearing registration No.TN-09-M-8691 was responsible for the accident. As far as the quantum of compensation is concerned, the trial Court has awarded compensation under various heads which is extracted hereunder:

S.Nos.	Heads	Amount awarded by the Tribunal
1.	Permanent Disability	30,000/-
2.	Loss of Earning	7,000
3.	Medical Leave	3,000/-
4.	Pain and Sufferings	7,000/-
5.	Medical Bills	20,220/-
6.	Extra Nourishment	1,000/-
7	Transportation	1,000/-
Total		Rs. 69,220/-

9. A perusal of the award passed by the tribunal shows that a sum of Rs.30,000/- was awarded towards partial permanent disability. Dr.Subramanian (PW2) has assessed the partial permanent disability as 30%. Since the accident took place in the year 2002, a sum of Rs.2,000/- can be awarded per percentage and thus, a sum of Rs.60,000/- (30 x 2000) is awarded towards partial permanent disability.

10. In the discharge summary (Ex.P2), it is shown that the claimant suffered a fracture of left femur and an operation was also performed. In the facts and circumstances, awarding compensation of Rs.69,220/- by the tribunal cannot be said to be on the higher side. Further more, the claimant did not file any appeal/ cross objection for enhancement of compensation. Infact, there is no appearance on his behalf in the instant appeal.

11. In the result,

(i) The appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

(i) The award of compensation passed by the tribunal is upheld.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dna

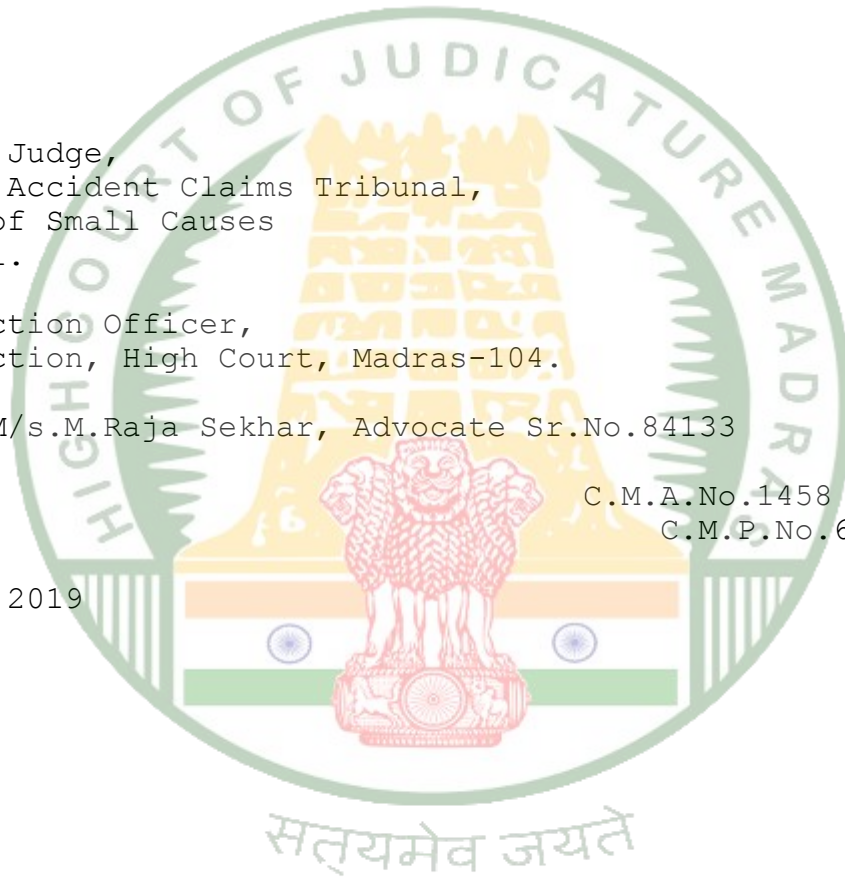
To

1. The IV Judge,
Motor Accident Claims Tribunal,
Court of Small Causes
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras-104.

+1 cc to M/s.M.Raja Sekhar, Advocate Sr.No.84133

C.M.A.No.1458 of 2006 and
C.M.P.No.6533 of 2006

NRL(CO)
CSL/18.03.2019



WEB COPY