

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.M.A.No.2661 of 2006
and
M.P.No.3 of 2006

The Oriental Insurance Company Limited
11, E.V.N. Road
Parimalam Complex
Erode.

... Appellant/R2

Vs.

1. Mohankumar

... R1/Petitioner

2. Sri Selvakumar Travels
No.16, Udumalpettai Road
Dharapuram.

.... R2/1st Respondent

(R2 - Exparte in Lower Court)

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree in M.C.O.P. No.1244 of 2000 on the file of the Motor Accident Claims Tribunal Additional District Judge, [Fast Track Court No.V], Coimbatore, Thiruppur, dated 04.11.2003.

For Appellant : Mr.N.Vijayaraghavan

For Respondent-1 : Mr.S.S.Swaminathan

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the appellant/Oriental Insurance Company Limited challenging the judgment and decree in M.C.O.P.No.1244 of 2000 on the file of the Motor Accident Claims Tribunal, Additional District Judge [Fast Track Court No.V], Coimbatore, Thiruppur, dated 04.11.2003.

2. The brief facts in the claim petition are as follows:

On 14.11.2000, at about 8.00 hours when the petitioner was proceeding in his moped bearing Registration No.RJ-19.8-M-1319 from west to east in the Somanur-Mangalam Road, Ayyampillai Garden, near Agragaraputhur at that time a bus bearing Registration No.TN-39-C-7173 which was coming in the opposite direction, driven by its driver in a rash and negligent manner and dashed against the claimant. As a result, the petitioner sustained grievous injuries including fracture and also other serious severe injuries all over the body. Immediately, he was taken for treatment at Ganga Hospital, Coimbatore and the petitioner has claimed a sum of Rs.5,00,000/- as compensation for the loss of income and disability sustained by him and also the medical expenses incurred by him.

3. The second respondent/Oriental Insurance Company has stated in their counter statement denied that the mode of accidents as stated by the petitioner. It is also stated that the alleged accident had happened only due to the carelessness driving of the moped by the Claimant without noticing the bus. It is also stated that the owner and the insurer of the moped are necessary parties, without impleading them as parties, the Insurance Company is not liable to pay any compensation. The other aspects regarding the age, injury of income, occupation as stated by the petitioner is very much denied and on the whole, the same claimed by him is very much excessive without any legal basis.

4. The Tribunal after considering the evidence and documents has given a finding that it is the driver of the first respondent's vehicle, who is very much responsible for the accident. Hence, the second respondent/Insurance Company is liable to pay any compensation. The Tribunal has also awarded a sum of Rs.3,69,700/- as compensation and the same is directed to pay the respondents 1&2 thereafter jointly and severally.

5. Aggrieved against the said judgement and decree second respondent/Insurance Company has preferred the present appeal. In the grounds of appeal, It is contended by the Insurance Company that the Tribunal has awarded huge sums of Rs.3,69,700/- as compensation, which is against the principles awarded in similar cases.

6. It is also stated that the Tribunal has also awarded a sum of Rs.3,16,800/- towards loss of income based on the permanent disability is very much excessive and the sum awarded by taking into consideration the disability at 55% and monthly income at Rs.3,000/- is unsustainable in the absence of any documents to prove the actual income. Hence, it is contended by

the Insurance Company that the sum awarded by the Tribunal is excessive and the same needs to be interfered with.

7. Heard both sides and perused the materials available on record.

8. It is seen from the records that the claimant was proceeding in his moped and when he nearing Ayyapillai Thottam Agragaraputhur, by the time the bus bearing Registration No.TN-39-C-7173 belonged to the 2nd respondent herein, which came in the opposite direction in a rash and negligent manner, and dashed against the petitioner and causes severe injuries. PW1/claimant was examined before the Tribunal and he admitted the accident and the injuries sustained by him in the cross examination. But no contra evidence has been placed by the appellant/Insurance Company to deny the statement of the claimant that the accident had occurred only due to the rash and negligent manner on the part of the driver of the first respondent. Ex.P1 is the First Information Report and the facts mentioned in the Accident Register is also clearly proved that it is a negligent on the part of the first respondent, which resulted the accident. Hence, the non production of any evidences or witnesses on the side of the respondent to substantiate their stand and also by considering the evidences and the documents placed before the Tribunal by the claimant, the finding of the Tribunal, fixing the liability on the respondent is found very much proper.

9. It is stated that the claimant, had sustained severe injuries for which Ex.P2-wound certificate was marked before the Tribunal, but it is seen that the claimant had sustained three injuries one his fracture in the right arm and other two injuries were stated as grievous injuries. It also reveal the fact that a nature of injury and treatment provided to the claimant. It is clearly stated that because of the fracture injury he had undergone surgery in his right leg, after surgery, the length of leg was reduced to some extent. Hence the assessment of permanent disability at 55% is very much proved with the documents and evidences.

10. It is seen from the award that the Tribunal has taken Rs.3,000/- as monthly income and based on the age, multiplier has been properly adopted and because of the 55% of disability the sum was determined by the Tribunal is proper and reasonable one. The loss of income for a man of 37 year old who is a driver by occupation and running the family has been properly assessed at Rs.3,16,800/- by the Tribunal and does not require any interference. By considering two injuries sustained by him, awarding a sum of Rs.5,000/- towards grievous injuries is also reasonable and the sum of Rs.44,800/- awarded for medical

expenses based on the document marked Ex.P5 is found reasonable, the claimant which are very much proved by the relevant documents and the sum awarded for nourishment at Rs.3,000/- is also not on the higher side.

11. Hence this Court on overall consideration, come to the conclusion that the compensation awarded by the Tribunal under various heads are very much reasonable and proper, in view of the documents and evidences produced by the claimant.

12. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the judgment and decree passed in MCOP.No. 1244 of 2000 dated 04.11.2003 by the Motor Accident Claims Tribunal, Additional District Judge (Fast Track Court No.V), Tiruppur. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

13. The appellant/Insurance Company is directed to deposit the entire award amount with interest and costs as apportioned by the Tribunal within a period of four weeks from the date of receipt of a copy of this Order, if not already deposited.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Additional District Judge,
[Fast Track Court No.V],
Coimbatore, Thiruppur.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.74555

RV(CO)
CS/11/06/2019

C.M.A.No.2661 of 2006

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