

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1179 of 2011

and M.P.No.1 of 2011

The Oriental Insurance Co. Ltd.,
No.146, Kumar Complex,
Thiruchengodu,
Namakkal District.

...Appellant/2nd Respondent

...Vs...

1.Raja

...1st Respondent/Claimant

2.Santhi

...2nd Respondent/ 3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 29.10.2010 in M.C.O.P.No.215 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.C.Kulanthaivel for R1
R2 - No appearance

JUDGMENT

The Oriental Insurance Company Limited, Thiruchengodu, the second respondent in M.C.O.P.No.215 of 2007 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Sankari has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 questioning their liability to pay compensation and also the quantum of compensation awarded by the tribunal. The first respondent/claimant filed the above claim petition seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 14.09.2006.

2.The brief facts of the case of the first respondent/claimant are as follows:

On 14.09.2006, at about 08.00 p.m., the first respondent/claimant was riding his two wheeler bearing Registration No. TN 28 R-5058 (TVS 50 XL) on Kumaramangalam - Mettupalayam road. When he was nearing Murthykadu, a speeding two wheeler (YAMAHA) bearing Registration No. TN 28 T 4465, belonging to the second respondent herein hit the two wheeler ridden by the first

respondent/claimant, as a result of which, the first respondent/claimant sustained injuries.

3. According to the first respondent/claimant, the rash and negligent driving of the driver of the two wheeler bearing Registration No. TN 28 T 4465 was the cause the accident and that since the two wheeler was insured with the present appellant, both of them are jointly and severally liable to pay compensation of Rs.3,00,000/- to him.

4. The second respondent herein did not appear before the tribunal and therefore, she was set ex-parte. The present appellant contested the claim petition by filing a counter. The tribunal after analysing the evidence on record, had held that since the first respondent/claimant was also responsible for the accident, the compensation should be apportioned in the ratio 50:50. He further held that the first respondent is entitled to a compensation of Rs.1,59,000/- for the injuries sustained by him together with interest at the rate of 7.5% per annum.

5. Mr. S. Arun Kumar, learned counsel appearing for the appellant would contend that since in the instant case, the FIR (Ex.P1) was registered against the first respondent/claimant, the tribunal was wrong in fixing 50% negligence on the part of the rider of the two wheeler bearing Registration No. TN 28 T 4465 (YAMAHA). He would also contend that the first respondent/claimant sustained a fracture of meta tarsal bones and Dr. Krishnasamy (P.W.2) had wrongly assessed the Partial Permanent disability as 23%. According to him the percentage of disability is on the higher side. He therefore contended that the tribunal should not have awarded a sum of Rs.46,000/- for partial permanent disability. He also drew the attention of this Court to the various heads under which the compensation was awarded to the first respondent/claimant as extracted hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Partial permanent disability	Rs.46,000/-
2.	Loss of Income	Rs.72,000/-
3.	Pain and sufferings	Rs.20,000/-
4.	Extra Nourishment	Rs.10,000/-
5.	Transportation Charges	Rs.5,000/-
6.	Attenders Charges	Rs.5,000/-
7.	Damage to clothes	Rs.1,000/-
Total Compensation		Rs.1,59,000/-

6.His specific contention is that though the first respondent/claimant had sustained only fracture of meta tarsal bones, an exorbitant amount of compensation had been awarded by the tribunal under various heads.

7.Per Contra, Mr.C.Kulanthaivel, learned counsel appearing for the first respondent/claimant would contend that the tribunal has considered various aspects and has awarded just compensation and therefore, the award passed by the tribunal need not be disturbed. He would further contend that the first respondent/claimant is a weaver by his profession and that considering the nature of injuries sustained by the first respondent/claimant, the tribunal has awarded a sum of Rs.46,000/- towards partial permanent disability. According to him, the first respondent/claimant is unable to do his routine work as before on account of the accident and therefore, awarding a sum of Rs.72,000/- towards loss of income is perfectly in order.

8.In the partial permanent disability Certificate (Ex.A6) issued by Dr.R.Krishnasamy (P.W.2), it is mentioned thus:

"On Clinical Examination:

right foot:- mild swelling + deforming with a bend + over the dorsal side of right foot

- Bony thickening + Bony tenderness + over the 3rd, 4th and 5th meta tarsal bone of right foot and proximal phalanx of R 5th toe
- right legs muscles are wasted 1 cm of circumference
- right muscles circumference 36 cm
- left leg muscles circumference 37 cm = -1 cm
- movements right foots 3,4,5th metatarso phalaneal joint and fore foot adduction and abduction movements are limited lost 10° each and further movements are painful
- nowadays, while we was walking about ½ kilometer distance (or) standing on his right foot for about ½ or climbing up and down of stair cases steps increases his pain in his right foot and right leg.
- He told me that before the accident he was doing textile labourer job; nowadays he is not able to do them, because of his increased pain over his right foot and right leg.

X-ray examination of right foot AP/oblique views - malunited fracature of 3rd, 4th and 5th metatarsal bones and proximal phalanx of 5th toe of right foot."

9.The doctor has given cogent reasons for arriving at the reasons of disability and it is also found by him that there was malunited fractures of 3rd, 4th and 5th toes of right foot. Therefore, I hold that awarding compensation of Rs.46,000/- towards partial permanent disability by the tribunal cannot be found fault with. However, the tribunal has taken the income of the deceased as Rs.3,000/- per month and has awarded a sum of Rs.72,000/- for the loss of income for two years. Absolutely, there is no evidence on record to show that the first respondent/claimant was unable to attend to his work for two years after the accident and therefore, considering the nature of injuries sustained by the first respondent/claimant, a sum of Rs.9,000/- (Rs.3000/- x 3) is awarded to the first respondent / claimant towards loss of income. Apart from that a sum of Rs.20,000/- is awarded towards Pain and Sufferings, Rs.500/- towards transportation charges, Rs.1,000/- towards damage to clothes, Rs.5,000/- towards extra nourishment and Rs.1,000/- towards Attenders Charges.

10.The tribunal has not awarded any amount towards loss of amenities and therefore, awarding a sum of Rs.5,000/- towards loss of amenities would meet the ends of justice. Thus, the finding of the tribunal with regard to the quantum of compensation is set aside. The total compensation awarded to the first respondent/claimant is reduced from Rs.1,59,000/- to Rs.87,500/- which shall carry interest at the rate of 7.5% p.a from the date of claim petition till the date of deposit. Thus the award and decree dated 29.10.2010 in M.C.O.P.No.215 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari is set aside. As far as the negligence is concerned, the tribunal has given cogent reasons for arriving the ratio as 50:50. All the observations made by the tribunal are unassailable. Hence, I do not see any reason to interfere with the findings recorded by the tribunal in this regard.

11.In the result, सत्यमेव जयते

(i)The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connection Miscellaneous Petition is closed.

(ii)The total award amount is fixed at Rs.87,500/-, out of which, the present appellant, the Oriental Insurance Company Limited has to pay only 50%, which would workout to Rs.87,500 / 2 = Rs.43,750/- together with at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)It is brought to the notice of this Court by the learned counsel appearing for the appellant that they have already paid the compensation awarded by the tribunal (i.e.),

Rs.79,500/- together with interest at the rate of 7.5% p.a. Since the award amount is only Rs.43,750/- together with interest at the rate of 7.5% per annum, the appellant is entitled to withdraw the excess amount deposited by them.

rna

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Sankari.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

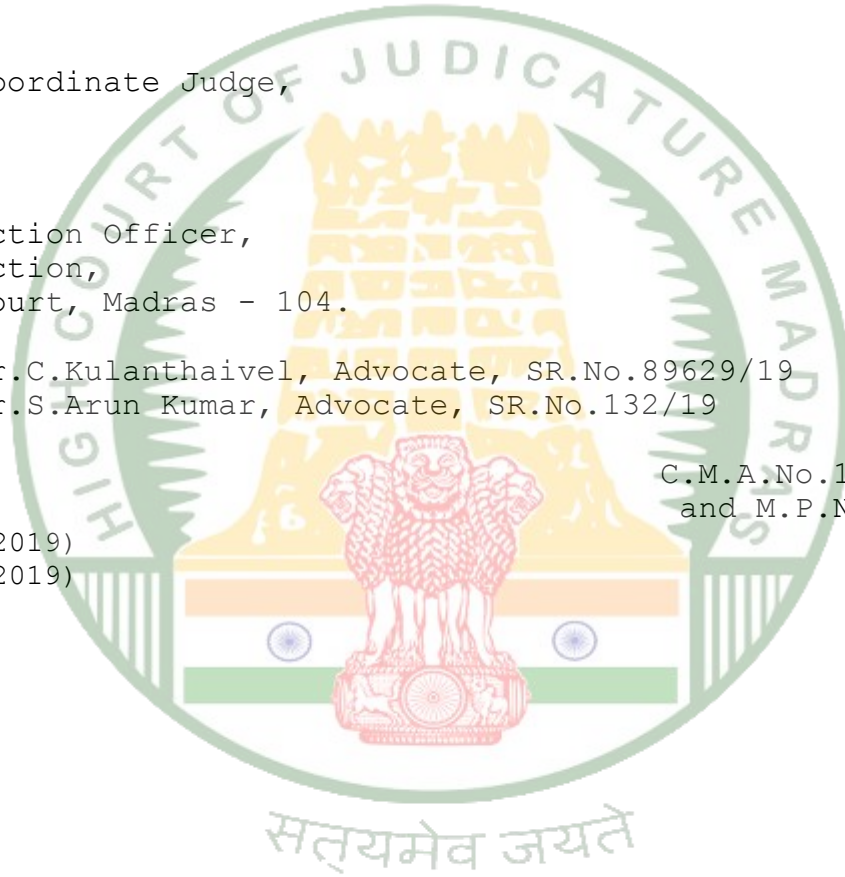
+1cc to Mr.C.Kulanthaivel, Advocate, SR.No.89629/19

+1cc to Mr.S.Arun Kumar, Advocate, SR.No.132/19

C.M.A.No.1179 of 2011
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Kak(15/10/2019)

Kak(20/11/2019)



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