



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

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CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1330 and 1331 of 2015

C.M.A.No.1330/2015

M/s.Oriental Insurance Co.Ltd.,
69, West Mada Churuch Road,
Appavoo Tower, 1st Floor,
Royapuram, Chennai - 600 013.

..Appellant/R2

Versus

1.V.Ramya

... R1/Petitioner

2.R.Pon Rani

..Respondent No.2/R1

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2014 made in M.C.O.P.Nos.5142 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

C.M.A.No.1331/2015

M/s.Oriental Insurance Co.Ltd.,
69, West Mada Churuch Road,
Appavoo Tower, 1st Floor,
Royapuram, Chennai - 600 013.

..Appellant/R2

Versus

1.K.Jothilakshmi

... R1/Petitioner

2.R.Pon Rani

..Respondent No.2/R1

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2014 made in M.C.O.P.No.5166 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.



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For Appellant
in both the appeals : Mr. J.Chandran

For Respondents
in both the appeals : Mr. K.Malai Kannu [for R1]

C O M M O N J U D G M E N T

These Appeals are filed by the Appellant/Insurance Company against the judgment and decree dated 28.04.2014 made in M.C.O.P.Nos.5142 and 5166 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai, respectively.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants in both the petitions M.C.O.P.Nos.5142 and 5166 of 2012 is that on 11.03.2012 at about 21.45 hours while the petitioners/claimants were travelling as pillion riders in the two wheeler bearing Registration No.TN-04-AD-3731 driven by the deceased Venkatraman (M.C.O.P.No.5917/2012) towards Thiruvottiyur in Ennore Express Road and while going near Kumaran ITI, Kaladipet, Chennai, another motorcycle bearing Registration No.TN-04-Q-5051 came at high speed, dashed against the petitioners/claimants' motorcycle, causing multiple grievous injuries to the petitioner/claimant in M.C.O.P.No.5142/2012 - V.Ramya including deep cut injuries in her right ankle, laceration 4th toe, laceration 5th toe, abrasion in fore head and Abrasions all over the body. So far as the petitioner/claimant in M.C.O.P.No.5166/2012 - K.Jothilakshmi is concerned she got multiple injuries, including laceration over the right ankle and right 4th and 5th toes. The accident had occurred due to negligence of the 1st respondent vehicle's driver only. The petitioners/claimants were aged 25 and 36 years and they were working as Tailors', earning Rs.5,000/- per month. Due to the injuries suffered they are unable to carry on their avocation, resulting in loss of income. Thus, the petitioners/claimants seek a sum of Rs.1,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not



occur due to the negligence of the 1st respondent's vehicle rider. The petitioners/claimants have to prove that the motorcycle bearing Registration No.TN-04-25051 was insured with the 2nd respondent and the failure on the part of the petitioners/claimants to implead the owner and insurer of the vehicle in which the petitioners/claimants travelled is fatal to the case. The claim of the petitioners/claimants about their age, avocation, income, nature of injuries and disabilities suffered are denied. The claim of the petitioners/claimants is exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petitions.

4. Before the Tribunal, common evidence was recorded in M.C.O.P.Nos.5142, 5166 and 5917 of 2012. Therein, the petitioners/claimants examined P.Ws.1 to 3 and marked Exs.P.1 to P.19. The respondents examined R.W.1 and produced document Ex.R.1. After analysing the evidence on record, the Tribunal found that the negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.32,000/- each in M.C.O.P.Nos.5142 and 5166 of 2012 payable by the respondents to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeals.

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

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Awards passed by the Tribunal is highly excessive. The evidence on record was not considered properly. Hence, the 2nd respondent/Insurance Company seeks to set aside the awards passed by the Tribunal by entertaining the appeals.

7. Per contra, the learned counsel for the petitioners/claimants contended that the Tribunal, after rightly concluding that the accident had occurred only due to the negligence of the 1st respondent driver, passed awards which are just and fair. There is no need to interfere with the same. Thus, the petitioners/claimants seek dismissal of the appeals.

8. According to the petitioners/claimants who deposed as P.Ws.2 and 3, before the Tribunal, on the fateful day of 11.03.2012 at about 9.45 p.m., while the deceased - Venkatraman (M.C.O.P.No.5917/2012) was riding the motorcycle bearing Registration No.TN-04-AD-3731 with P.Ws.2 and 3 accompanying him

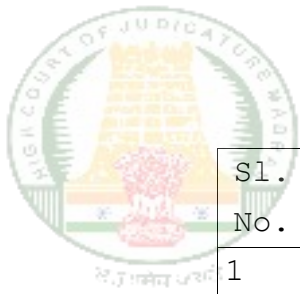


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as pillion riders, while going in Ennore Express Road, the 1st respondent motorcycle came in the opposite direction at high speed driven in rash and negligent manner dashed against the vehicle, in which the petitioners/claimants were travelling, causing them grievous injuries. Due to the said impact, Venkatraman died in the hospital due to the injuries suffered in the accident. The police also registered Ex.P.1 - F.I.R against the driver of the 1st respondent only. Thereafter, Police on completion of investigation, laid final report against the driver of the motorcycle bearing Registration No.TN-04-5051. Thus, on the basis of the same, the Tribunal has clearly held that the negligence of the 1st respondent driver alone caused the accident.

9. On the other hand, R.W.1 was examined by the Respondent and he stated that the rider of the vehicle bearing Registration No.TN-04-AD-3731 is responsible for the accident. Admittedly, the person who drove the two wheeler in which the Petitioner travelled is no more. Further, even assuming that three persons travelled in the said two wheeler, that alone is not sufficient to put negligence on the driver of the two wheeler, who is since deceased. Considering the circumstances and the evidence available on record, it is clear that only due to the negligence of the 1st respondent rider, the accident had occurred. There is no contra evidence on the side of the respondent to the same. As such, the conclusion of the Tribunal that the driver of the 1st respondent vehicle alone is responsible for the accident is appropriate and the same is confirmed. The Tribunal has considered the fact that the offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent. As such, they are liable to pay the compensation. The said findings are appropriate and does not warrant any interference.

10. Further, it is pertinent to point out that in M.C.O.P.No.5142/2012, the Tribunal on the basis of Ex.P.14 - A.R.Copy has fixed the age of the petitioner/claimant as '25' years and as there was no proof of income produced by the petitioner/claimant fixed her monthly income at Rs.5,000/-. The petitioner/claimant has taken treatment in Government Hospital, Chennai on 11.03.2012 as per Ex.P.14 - A.R.Copy, and the petitioner/claimant has suffered laceration over the right ankle and right 4th and 5th toes and treated as out patient in J.K.D.Clinic, as per the contents of Ex.P.15 - O.P.Chit, the petitioner/claimant suffered - bone injury. Thus, the nature of injury suffered by the petitioner/claimant is simple in nature. As such, the Tribunal considering the evidence on record awarded a sum of Rs.32,000/- under different heads as stated below:-



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Sl. No.	Head	Amount granted by the Tribunal (Rs.)
1	Transportation	2,000.00
2	Extra Nourishment	2,000.00
3	Damages to clothes	1,000.00
4	Medical Expenses	2,000.00
5	Pain and Suffering and disability	25,000.00
	Total	32,000.00

11. As far as the claim made in M.C.O.P.No.5166/2012 is concerned, the petitioner/claimant has taken treatment in Rajiv Gandhi Government Hospital, Chennai on 11.03.2012 as per Ex.P.18 - A.R.Copy, and the petitioner/claimant has suffered left low back pain and sustained mild tenderness on left side iliac joint, as per the contents of Ex.P.19 - O.P.Chit and there is no bone injuries suffered by the petitioner/claimant. Thus, the nature of injury suffered by this petitioner/claimant is simple in nature. As such, the Tribunal considering the evidence on record awarded a sum of Rs.32,000/- under different heads as stated below:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)
1	Transportation	2,000.00
2	Extra Nourishment	2,000.00
3	Damages to clothes	1,000.00
4	Medical Expenses	2,000.00
5	Pain and Suffering and disability	25,000.00
	Total	32,000.00

12. Considering the periods of treatment, nature of injuries and other attendant circumstances, the Tribunal is justified in awarding compensation of Rs.32,000/- to each of the petitioners/claimants, who suffered only simple injuries. The 2nd respondent/Insurance Company has not made out any grounds to interfere with the same. Thus, the Appeals have to fail. The point is answered accordingly.

13. In the result, the Civil Miscellaneous Appeals are dismissed. The Award passed by the Tribunal dated 28.04.2014 in



MCOP.No.5142 of 2012 and 5166 of 2012 is confirmed. The quantum of award and the interest rate are confirmed. As per the order of this Court dated 28.07.2015 that the Appellant/Insurance Company was directed to deposit the award amount as awarded by the Tribunal and the claimants are permitted to withdraw 50% of the deposited amount. Hence, the claimants in each MCOP are entitled to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn. The Tribunal shall follow appropriate procedure for disbursal of the award amount. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The II Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

+2cc to Mr. J.Chandran, Advocate sr.no.43649 & 43648

+2cc to Mr. K.Malai Kannu, Advocate sr.no.43456 & 43457

C.M.A.Nos.1330 and 1331 of 2015

ssd(co)
nr 11/12/2018