

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.06.2019	Delivered on 09.08.2019
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3188 of 2005

M/s. Oriental Insurance Co. Ltd.,
No.A-13, 2nd Avenue
Anna Nagar, Chennai - 102. ... Appellant/2nd Respondent

vs.

1. G.Rajamani
2. S.Sivakumar ... Respondents/claimant/
1st Respondent

(R2 set exparte before the Tribunal)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15.04.2005 made in M.C.O.P.No.3616 of 2000 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For appellant : Mr.S.Janarthanan
For respondent-1 : Mr.M.Swamikkannu

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award dated 15.04.2005 passed by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai, in M.C.O.P.No.3616 of 2000.

2.The case in a nutshell is as follows:

On 06.09.2000 about 7.50 hours, while the first respondent/claimant was proceeding as pillion rider in a motor cycle bearing Regn.No.TN05 B9907 from Ayanavaram to Padi, a car bearing Regn.No.TN01 R1472 belonging to the second respondent herein which was coming from the backside, turned right and hit the motor cycle, due to which, he suffered injuries all over the body with compound and communicated fracture in left leg below knee, severe injury in skull and chest and dislocation of bones in left side hip, right leg knee and ankle. Stating so, he filed

a claim petition claiming a compensation of Rs.8,75,000/-. The Appellant Insurance Company resisted the claim petition by filing a counter, wherein, it is stated that the accident took place solely due to the rash and negligent act of the rider of the motorcycle bearing Registration No.TN-05-B-9907 and hence, the appellant is not liable to pay compensation. The Tribunal, on perusal of the oral and documentary evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving on the part of the driver of vehicle bearing Registration No.TN-01-R-1472 and quantified the compensation at Rs.6,00,200/- with interest at 9% p.a. The break-up details of the compensation read as follows:

Sl. No.	Head	Amount awarded by the Tribunal
1	Loss of income	Rs. 20,000/-
2	Transportation expenses	Rs. 2,000/-
3	Extra Nourishment	Rs. 7,000/-
4	Damage to the clothes	Rs. 200/-
5	Medical expenses	Rs. 6,000/-
6	Loss of income, Pain and suffering to the family members	Rs. 25,000/-
7	Additional Transportation expenses	Rs. 40,000/-
8	Mental Agony	Rs. 20,000/-
9	Pain and suffering to the claimant	Rs. 60,000/-
10	Permanent disability	Rs.1,50,000/-
11	Future loss of earning capacity	Rs.2,50,000/-
	Total	Rs.6,00,200/-

Aggrieved over the same, the appellant Insurance Company has filed this appeal.

3.The learned counsel for the Appellant contended that when the rider of the motor cycle was also responsible for the accident, the Tribunal ought not to have fastened the entire liability on the appellant Insurance Company. The learned counsel further contended that considering the nature of the injuries sustained by the first respondent/claimant, the compensation of Rs.6,00,200/- awarded by the Tribunal is excessive, exorbitant and disproportionate to the nature of the injuries sustained by the first respondent/claimant and the same

has to be reduced.

4. On the other hand, the learned counsel for the first respondent/claimant submitted that the Tribunal, after examining the evidence let-in by the parties, the Tribunal has rightly fastened the liability on the appellant Insurance Company and awarded the just compensation and the same warrant no interference at the hands of this Court.

5. Regarding the question on negligence, PW1/claimant has deposed that on 06.09.2000 about 7.50 hours, while he was proceeding as pillion rider in the motor cycle bearing Regn.No.TN05 B9907 from Ayanavaram to Padi, the car bearing Regn.No.TN01 R1472 which was coming from the backside, turned right and hit the motor cycle and due to the said impact, he sustained grievous injuries. PW2 has asserted that with respect to the accident occurred on 06.09.2000, a case in Crime No.230/2000 was registered against the driver of the Car; after investigation, charge sheet was filed for the offences under section 338 IPC and under Section 184 of the Motor Vehicles Act and the same was taken on file as CC No.77 of 2000; the driver of the Car admitted the guilt and paid fine of Rs.1,000/- before the trial Court. Ex.P11 is the FIR, Ex.P12 is the rough sketch and Ex.P13 is the charge sheet. However, there was no rebuttal evidence adduced on the side of the appellant Insurance Company to disprove the statement so raised on the negligence. Therefore, placing reliance on those oral and documentary evidence adduced by the first respondent/claimant, the Tribunal has rightly arrived at the conclusion that the driver of car bearing Registration No.TN-01-R-1472 was responsible for the accident and accordingly, fixed the liability on the appellant insurance company, who is the insurer of the offending vehicle, which finding this Court is not inclined to interfere.

6. As regards the quantum of compensation, PW1 in his evidence, has stated that in the accident, he sustained grievous injuries all over the body, besides compound and communicated fracture in left leg below knee; and he is a holder of ITI certificate and he was earning Rs.5,000/- per month by working as fitter-cum-turner. Ex.P5 is the ITI certificate. PW2/Doctor has deposed that due to the impact of the accident, the claimant sustained fracture in left leg below knee and there was dislocation and swelling in the bones; for the said injuries, he cannot stand continuously, he finds it difficult to walk fast and ride the vehicles, the movement of his left leg was restricted to 80 degree; he suffered 45% permanent disability. Ex.P8 is the disability certificate. The Tribunal, based on the evidence of P.W.1 coupled with P.W.2 and other medical records, has awarded Rs.1,50,000/- towards 45% permanent disability, which, as rightly argued by the learned counsel for the appellant, is on the higher side and the same is hereby reduced

to Rs.90,000/- by awarding Rs.2,000/- per percentage of disability.

7.Further, the Tribunal has awarded Rs.20,000/- towards mental agony and Rs.60,000/- towards pain and suffering, which, in the considered view of this Court, are excessive and exorbitant and the same are hereby reduced to 50,000/- under the one head "mental agony and pain and suffering". In view of the same, the sum of Rs.25,000/- awarded towards loss of income and pain and suffering awarded to the family members is a duplication and the same is hereby deleted.

8.That apart, the Tribunal has awarded Rs.200/- towards damage to the clothes and Rs.6,000/- towards medical expenses. As per Ex.P7 medical bills, the claimant incurred Rs.5,425.70 towards medical expenditure. As such, both the heads are clubbed together and Rs.6,000/- is hereby awarded towards medical expenses and damage to the clothes. Further, the Tribunal has awarded Rs.2,50,000/- towards future loss of earning capacity, which is excessive and exorbitant and the same is hereby reduced to Rs.1,25,000/- having regard to the percentage of disability sustained by the claimant due to the accident. Similarly, Rs.40,000/- awarded towards Additional Transport expenses is arbitrary and without any basis and the same is hereby set aside, considering the facts and circumstances of the case.

9.However, the Tribunal has awarded Rs.20,000/- towards loss of income, Rs.2,000/- towards transport expenses, Rs.7,000/- towards extra nourishment, which this Court is not inclined to interfere, as the same are just and reasonable, taking into account the nature of the injuries suffered by the claimant. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Head	Amount awarded by this Court
1	Loss of income	Rs. 20,000/-
2	Transportation expenses	Rs. 2,000/-
3	Extra Nourishment	Rs. 7,000/-
4	Medical expenses and damage to the clothes	Rs. 6,000/-
5	Mental Agony and pain and suffering	Rs. 50,000/-
6	Permanent disability	Rs. 90,000/-
7	Future loss of earning capacity	Rs.1,25,000/-
	Total	Rs.3,00,000/-

There is no modification with respect to the interest awarded by the Tribunal at 9% p.a.

10. In fine, the Civil Miscellaneous Appeal is allowed in part. No costs.

11. It is represented by the learned counsel for the appellant Insurance Company that as directed by this Court, the appellant has already deposited the entire compensation as awarded by the Tribunal with interest and costs. In view of the same, the Tribunal is directed to transfer the compensation amount as modified by this Court along with interest and costs, after deducting the amount, if any, already withdrawn, to the savings bank of the claimant through RTGS, within a period of one week from the date of receipt of a copy of this order. The appellant Insurance Company is permitted to withdraw the balance amount lying in the deposit.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai 104.

+1 cc to Mr.S.Janarthanan Advocate sr68615

+1 cc to Mr.M.Swamikkannu Advocate sr68724

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