

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.407 of 2005

and

CMP.No.2112 of 2005

The Branch Manager,
Oriental Insurance Co. Ltd,
Hosur Branch.

...Appellant

.Vs.

1.V.Asokan
2.S.Raja Gopal

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.01.2004 passed in MCOP.No.813 of 2002 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Krishnagiri.

For Appellant : Mr.M.Rajasekhar
For Respondents : No appearance

JUDGMENT

The Branch Manager, Oriental Insurance Company Limited, the second respondent in MCOP.No.813 of 2002 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Krishnagiri has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The first respondent / claimant had filed the above said claim petition seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 30.04.2002.

2. On 30.04.2002, at about 10.30 am, when the claimant was walking along Soolagiri bye pass road, a speeding lorry bearing Registration No. KA 10/0939 belonging to the second respondent hit him, as a result of which, he sustained injuries all over his body. His further contention is that the rash and negligent driving of the driver of the lorry bearing Registration No. KA 10/0939 belonging to the second respondent was the cause of the accident and that since the said lorry was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

3. The second respondent, owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant / Oriental Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / Subordinate Judge, Krishnagiri after analysing the evidence on record, awarded a compensation of Rs.3,39,240/- together with interest at the rate of 9% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the Oriental Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.M.Rajasekhar, learned counsel appearing for the appellant contended that even as per the contentions of the claimant in his claim petition, he sustained only a lacerated injury over his right hand, closed shaft right femur and multiple injuries all over his body and Dr.Ilangovan (PW2) had assessed the partial permanent disability as 25%. His further contention is that when there is no functional disability, the Tribunal had adopted multiplier method and awarded a compensation of Rs.3,06,240/- towards "loss of earning capacity". He therefore prayed for scaling down the award passed by the Tribunal.

5. No appearance on behalf of the respondents.

6. A perusal of Ex.P2, the discharge summary issued by St. Johns Medical College Hospital, Bangalore shows that the claimant was admitted as an inpatient on 30.04.2002 and discharged on 15.05.2002. Though it is stated that an operation was performed on the claimant, the details of the operation have not been indicated in the alleged discharge summary. The claimant has not also filed X-ray and its report. However, Dr.Ilangovan (PW2) had mentioned in his partial permanent disability certificate (Ex.P5) that the claimant is found to be suffering from malunited shaft of right femur. He has not also indicated whether he perused the X-ray and its report before coming to this conclusion. Therefore, the disability certificate (Ex.P5) issued by Dr.Ilangovan (PW2) cannot be considered for awarding compensation. The only available record before this Court is the discharge summary (Ex.P2) issued by St. Johns Medical College Hospital, Bangalore. There is no seal of the Hospital or the signature of the Medical Officer in the discharge summary (Ex.P2) and a copy of the wound certificate is also not filed by the claimant. In the absence of medical records, the injury sustained by the claimant is treated as simple in nature and therefore a sum of Rs.15,000/- is awarded as compensation to the appellant / claimant.

7. The Tribunal even without looking into the fact that the claimant has not filed any medical records to show that he has sustained grievous injuries as alleged by him, on the account of the accident, had adopted multiplier method and awarded an exorbitant compensation of Rs.3,39,240/- together with interest at the rate of 9% per annum to the claimant. The quantum of compensation awarded by the Tribunal is not commensurate with the nature of injuries sustained by the claimant. The manner in which the Tribunal has decided upon the quantum of compensation suffers from logical reasoning. Arbitrariness is glaringly visible in the instant case. This court totally disapproves the decision of the Tribunal and deprecates such practice.

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.3,39,240/- to Rs.15,000/- which would carry interest at the rate of 7.5% per annum.

(iii) The appellant / Oriental Insurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.15,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.813 of 2002 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order.

(iv) The first respondent/ claimant is at liberty to withdraw the same after following due process of law.

(v) The appellant / Oriental Insurance Company Limited is entitled to withdraw the excess amount deposited by them over and above the amount awarded by this Court.

Sd/-

Assistant Registrar(Arbitration)

// True Copy//

Sub Assistant Registrar

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To

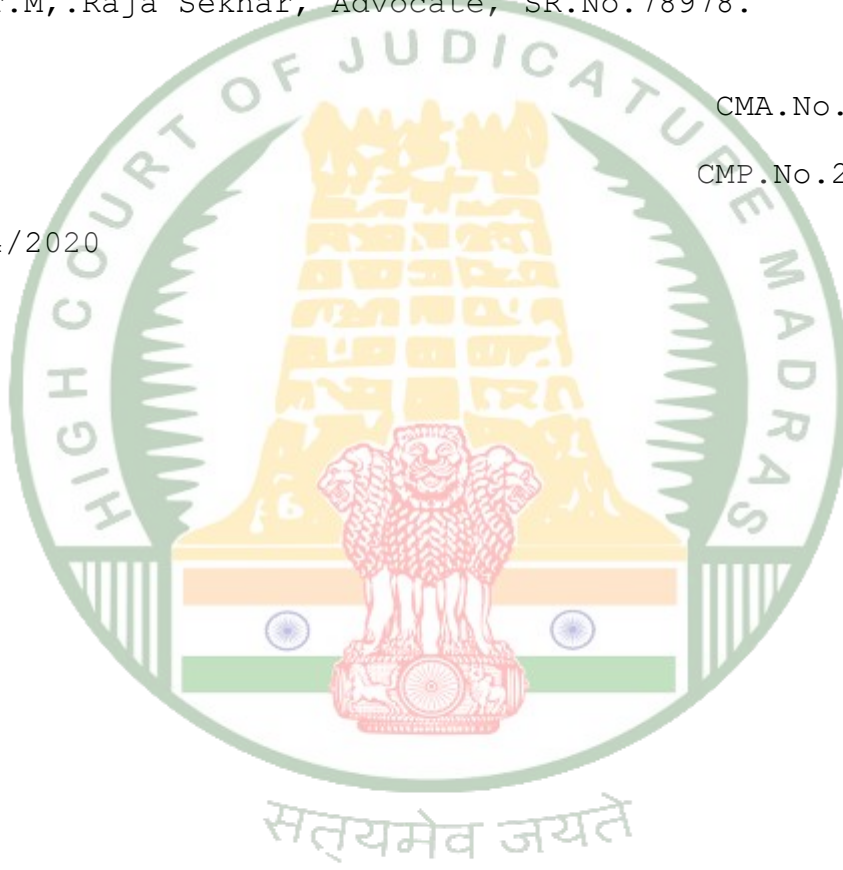
The Motor Accidents Claims Tribunal,
The Subordinate Court,
Krishnagiri.

Copy to: The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.M,.Raja Sekhar, Advocate, SR.No.78978.

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RP (CO)
CSR: 05/04/2020



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