

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.630 of 2006 and
C.M.P.No.2599 of 2006

The Oriental Insurance Co.Ltd.,
Esplanade, Chennai 600 108. Appellant/2nd Respondent

Vs.

1.D.Ravi
2.K.L.Shanmuganathan
(2nd respondent exparte before
the lower Court)2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.06.2005 made in MCOP No.403 of 2000 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellant : M/s.D.Geetha
For R-1 : No Appearance
For R-2 : Exparte

J U D G M E N T

This appeal is preferred by the Insurance Company as against the award dated 15.06.2005 passed in MCOP No.403 of 2000, wherein, a compensation of Rs.1,02,000/- was arrived at by the Tribunal, payable by the appellant herein to the first respondent.

2. The breakup details of such compensation read thus:-

Transport expenses	-	Rs. 1,000/-
Extra nourishment	-	Rs. 1,000/-
Medical expenses	-	Rs. 50,000/-
Loss of earning during the treatment period	-	Rs. 10,000/-
Pain and suffering	-	Rs. 10,000/-
Permanent disability	-	Rs. 30,000/-

Total	-	Rs.1,02,000/-

3. The case in brief, is as follows:-

On 03.07.1997 at about 5.15 p.m., the first respondent/claimant was riding his two-wheeler bearing Registration No.TN-04-C-5916 on the Kamarajar Salai, Chennai. When he was nearing Neppiar Bridge, the motorcycle bearing Registration No.TN-59-Y-7660, belonging to the second respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and hit the back side of the motorcycle driven by the first respondent. Due to the said impact, the claimant/first respondent sustained grievous injuries. He filed a claim petition for compensation before the Tribunal. The Tribunal, based on the materials available on record, has awarded a sum of Rs.1,02,000/- with interest at the rate of 9% per annum from the date of petition as compensation, as against which, this appeal has been preferred by the Insurance Company.

4. Heard the learned counsel for the Appellant/Insurance Company and perused the materials available on record.

5. Despite service of notice, there is no representation on behalf of the first respondent.

6. The learned counsel for the Appellant/Insurance Company submitted that the Tribunal failed to see that there is no independent witness to prove the act of the rider of the two-wheeler, who is stated to have hit the claimant's vehicle. He further submitted that the award passed by the Tribunal is without any basis and is liable to be set aside.

7. The Tribunal has taken note of the evidence of PW.1, the claimant himself and has found that the version of PW.1 and the other documents adduced correlated with each other. Further, considering the fact that the second respondent has accepted his guilt and has paid the fine amount, the Tribunal has fixed the negligence on the second respondent and accordingly fastened the liability on the appellant Insurance Company, being the insurer of the two-wheeler. This Court is of the view that the findings rendered on negligence by the Tribunal are perfectly valid, since the same are based on documents and evidence available on record. Further, the appellant herein has not adduced any evidence or documents before the Tribunal to disprove the manner of accident. In the circumstances, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler, is confirmed.

8. As far as the quantum of compensation awarded by the Tribunal is concerned, it is seen that due to the injuries sustained, the plates and screws have been fixed on the claimant's right leg and the claimant has difficulty in sitting

cross legs and in squatting; there was discomfort to the claimant to fold the leg by 20 degrees while walking. Considering the same, P.W.2-Doctor has assessed, the disability of the claimant at 30%.

9. Based on the above, the Tribunal has awarded the compensation under the heads of permanent disability, pain and suffering and loss of earnings during treatment period at Rs.30,000/-, Rs.10,000/- and Rs.10,000/- respectively. Further, towards medical expenses a sum of Rs.50,000/- was awarded, which is based on medical bill series(Ex.P3), a sum of Rs.1,000/- each was awarded towards transportation and extra nourishment. The said quantum arrived at by the Tribunal cannot be said to be excessive. This Court is of the view that the quantum arrived at by the Tribunal perfectly matches with the settled principles of law and II schedule of the Motor Vehicles Act and hence, the same need not be interfered.

10. At this juncture, the learned counsel for the Appellant/Insurance Company submitted that the appellant herein cannot be saddled with the interest at the rate of 9% per annum from the date of petition till the date of deposit.

11. The said contention has some force. Hence, the interest portion alone is reduced to 7.5% from 9% to be payable by the appellant to the first respondent herein from the date of petition till the date of deposit.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected CMP is closed. The Appellant is directed to deposit the entire compensation amount, along with 7.5% interest from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To

1. The III Small Causes Judge,
Motor Accident Claims Tribunal,
(III Small Causes Court),
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras.

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