

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1012 of 2009
and M.P.No.1 of 2009

The Oriental Insurance Co., Ltd.,
rep.by its Divisional Manager
Division Office-10, Nos.213 to 217
II Floor, III Main Road 4th Cross
Chamrajepet, Bangalore- 560 018.

... Appellant /2nd Respondent

Vs

1.Venkatappa ...Ist Respondent/Petitioner

2.T.Mamatha2nd Respondent/Ist Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 21.11.2007 made in MCOP No.813 of 2005 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance

JUDGMENT

This appeal is preferred by the appellant Insurance Company against the award of a sum of Rs.2,39,960/- towards compensation to the first respondent, due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day i.e., on 26.10.2004, the first respondent along with other persons working as coolies, were proceeding in the Tata Mini Lorry bearing Regn.No.KA-01-B-385 belonging to the second respondent and insured with the appellant Insurance Company. At about 02.00 p.m., when the lorry was proceeding in the Kamandoddi - Dasanpura Road towards Kamandoddi, near Ravoothpalli and K.P.R.P.Channel, the driver of the said lorry

drove it in a rash and negligent manner, applied sudden brake and swerved the vehicle towards the left side of the road. Due to the same, the lorry toppled down on the left side of the road and the first respondent sustained multiple injuries all over the body. The first respondent filed a claim petition claiming compensation of Rs.4,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,39,960/- with interest at the rate of 7.5% per annum from the date of the petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has disputed only the quantum of compensation awarded by the Tribunal, stating that it is excessive and exorbitant. He has not disputed the manner in which the accident took place.

5.Heard the learned counsel for the appellant and perused the materials available on record.

6.Despite the service of notice and the name of the respondents having been printed in the cause list, there is no representation on their behalf.

7.Since the appellant Insurance Company has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the mini lorry, need not be interfered with.

8.With regard to the quantum of compensation, the Tribunal has awarded Rs.33,060/- towards medical expenses based upon Ex.P6, Rs.5,000/- towards pain and suffering, Rs.2,500/- towards hospitalisation expenses, Rs.2,000/- towards nourishment and Rs.3,000/- towards loss of earning during the treatment period. Even though the claimant claimed before the Tribunal that he was earning a sum of Rs.4,000/- per month by working as loading and unloading coolie, since no document was available to that effect, the Tribunal came to the conclusion that the claimant/injured would have earned not less than Rs.3,000/- per month and accordingly calculated the annual income at Rs.36,000/-. Thereafter, adopting the multiplier of 18, arrived at the sum of Rs.1,94,400/- towards 30% disability. This Court is of the view that the said sum of Rs.1,94,400/- awarded towards disability is very much on the higher side, since the claimant has not produced any documentary evidence for the alleged loss. However, considering the facts and circumstances of the case, this Court deems it fit to reduce the same to Rs.1,00,000/-. With regard to the amounts awarded towards other

heads, this Court is of the considered view that the Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation towards the same.

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of compensation is reduced to Rs.1,45,560/- (Rupees One Lakh Forty Five Thousand Five Hundred and Sixty only) with interest at the rate of 7.5% per annum from the date of petition. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit the modified compensation, as ordered above, with interest and costs, after deducting the amount if any already deposited, within a period of six 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
I Additional District Judge, Krishnagiri.

2. The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arunkumar, Advocate Sr.73334

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