

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.1730 OF 2009

AND

M.P.NO.1 OF 2009

The Oriental Insurance Company Limited,
Divisional Office,
No.1 and 4, Head Quarters road,
P.B.No.3857, Coimbatore District.

...Appellant/2nd Respondent

vs.

1.Mounasamy

2.Selvaraj

... Respondents/Petitioner
and First Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.07.2008 passed in MCOP.No.1428 of 2006, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.V, Coimbatore.

For Appellant : Mr.S.M.Rajasekhar

For Respondents : Mr.S.Swaminathan for R1
No appearance for R2

J U D G M E N T

The Oriental Insurance Company Limited, the second respondent in MCOP.No.1428 of 2006, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.V, Coimbatore at Tiruppur has filed the present appeal. The first respondent/claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident on 20.10.2006.

2. The case of the claimant in nutshell is as follows:

On 20.10.2006, at about 19.30 hours, when the claimant was riding his two wheeler bearing Registration No.TN 37 AF 2682 near G.K.Bakery, on Kovai - Kalapatti Main Road, another two wheeler bearing Registration No. TN 38 AF 6393 belonging to the second respondent and insured with the present appellant hit the two wheeler, as a result of which, the claimant fell down and sustained injuries all over his body. According to the claimant, the rash and negligent riding of the rider of the two wheeler bearing Registration No. TN 38 AF 6393 belonging to the second respondent was the cause of the accident and that since the said two wheeler was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the offending vehicle 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 insured. The learned Additional District Judge, Fast Track Court No. V / Motor Accident Claims Tribunal, Coimbatore after analysing the evidence on record, awarded a compensation of Rs.6,03,035/- together with interest at the rate of 7.5% 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. Heard Mr.S.M.Rajasekhar, learned counsel appearing for the Oriental Insurance Company Limited and Mr.S.Swaminathan, learned counsel appearing for the first respondent.

5. No appearance on behalf of the second respondent.

6. A perusal of the records shows that Dr.Senthilkumar, Ortho Surgeon (PW2) had assessed the partial permanent disability sustained by the claimant as 59.2% and the Tribunal has reduced the same by 50%. It is seen from the wound certificate (Ex.A2) and discharge summary (Ex.A3) that the claimant has sustained the following injuries:

"(i) fracture of left side frontal bone involving frontal sinus with left frontal contusion, left polar EDH

(ii) left eye ecchymosis with orbital haemorrhage with left optic nerve injury

(iii) fracture of left maxilla and left infra orbital bone

(iv) fracture of left zygomatico maxillary junction

- (v) fracture of left zygomatic arch
- (vi) fracture of dorsal aspect of the left distal radius
- (vii) fracture of lateral condyle of left tibia"

Considering the nature of injuries sustained by the claimant, 50% is taken up as partial permanent disability. Since the claimant was a Carpenter by profession, adopting multiplier method is warranted as per the decision of the Division Bench of the Honourable Supreme Court of India in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. In the claim petition, the claimant has mentioned his income as Rs.8,000/- per month and in the absence of income proof, the Tribunal has fixed the notional income of the claimant as Rs.4,000/- per month and the same cannot be found fault with. Since the age of the claimant was 33 years on the date of the accident, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of earning capacity" is calculated as follows:

$$= \text{Rs.}4,000/- \times 12 \times 16 \times 50/100$$

$$= \text{Rs.}3,84,000/-$$

7. The award passed by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.3,84,000/-
2.	Pain and sufferings	Rs. 50,000/-
3.	Medical expenses	Rs.1,77,534/-
4.	Transportation	Rs. 5,000/-
5.	Extra nourishment	Rs. 10,000/-
6.	Attender's charges	Rs. 5,000/-
7.	Damage to clothes	Rs. 500/-
8.	Loss of income	Rs. 48,000/- (Rs.4,000/- x 12 months)
9.	Loss of amenities	Rs. 20,000/-
Total		Rs. 7,00,034/-

Thus the compensation awarded by the Tribunal is enhanced from Rs.6,03,035/- to Rs.7,00,034/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.6,03,035/- to Rs.7,00,034/-.

(iii) The appellant/Oriental Insurance Company Limited is directed to deposit the enhanced compensation i.e., Rs.7,00,034/- (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.1428 of 2006 on the file of the Motor Accident Claims Tribunal/ Additional District Judge, Fast Track Court No.V, Coimbatore within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/ claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The Additional District Judge,
Fast Track Court No. V,
Coimbatore.

+1cc to Mr.S.M.Rajasekhar, Advocate, S.R.No.87591

+1cc to Mr.S.Swaminathan, Advocate, S.R.No.86959

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and
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SPD(CO)
CS/31/07/2020