

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.234 of 2009

The Oriental Insurance Co. Ltd.,
India Life Building,
Trichy Road, Coimbatore.

.. Appellant/3rd respondent

Vs.

1. K.Meenakshi Sundaram

..Respondent/claimant

2. P.Ramasamy

(R2 set exparte before the Tribunal)

..2nd Respondent/

1st respondent

3. K.Ganesan

..3rd Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.10.2005 made in M.C.O.P.No.496 of 2004 on the file of Motor Accidents Claims Tribunal cum Third Additional Sub Court, Coimbatore.

For Appellant : Mr. M.Rajasekhar

For R1 : Mr.Y.Deva Arul Prakash

R2 & R3 : Not served

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.3,01,799/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief is as follows:

On the fateful day, i.e., on 30.08.2002, at about 11.00 am, the first respondent/claimant was proceeding in a Motorcycle bearing Registration No.TN38 P 3801 as a pillion rider. When the vehicle was plying on Saravanampatti - Thudialur Road, near Kumara Guru College, a Lorry bearing registration no.TNE 3362 belonging to the third respondent and insured with the appellant

insurance company came in a rash and negligent manner from the opposite direction and dashed against the motorcycle. Due to the said impact, the first respondent/claimant sustained grievous injuries, for which, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,01,799/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company submitted that the rider of the motorcycle did not possess a valid driving licence and thereby the owner of the vehicle violated the policy condition and hence, the appellant is not liable to pay any compensation. He also submitted that compensation awarded by the Tribunal is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent and hence, the same has to be reduced to certain extent.

4.The learned counsel for the first respondent/claimant submitted that the Tribunal, after properly analysing the oral and documentary evidence available on record, has awarded the just compensation and hence, the same does not require any interference by this Court.

5.Heard the learned counsel appearing for the appellant and learned counsel appearing for the first respondent and perused the materials available on record carefully and meticulously.

6.With regard to liability, according to the appellant insurance company, the rider of the motor cycle did not possess valid driving licence. However, the Tribunal, taking note of Ex.R1-driving licence of the rider of the motorcycle, which was valid from 30.07.2002 to 29.03.2003, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. As the finding so rendered by the Tribunal is based on the materials and evidence adduced by the parties, this Court finds no reason to differ with the view taken by the Tribunal and hence, the same is hereby confirmed.

7.As regards the quantum of compensation, the Tribunal has awarded the total sum of Rs.3,01,799/- to the first respondent/claimant. P.W.1/claimant deposed in his evidence that at the time of accident, he was aged 21 years and was studying B.Com II year in Dr.S.N.S. Raja Lakshmi College of Arts and

Science, Saravanampatti, Coimbatore; and he initially took treatment at M/s.Ganga Medical hospital and thereafter, at M/s. Senthil Hospital, Coimbatore, as inpatient for a period of 10 days. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained grievous and multiple injuries in all over the body. After assessing the first respondent/claimant, the doctor issued Ex.P13 permanent disability certificate to the tune of 24%. Ex.P9 is medical bill series. Considering the oral and documentary evidence adduced by the claimant, the Tribunal has awarded Rs.64,299/- towards medical expenses, Rs.24,000/- towards permanent disability, Rs.25,000/- towards mental agony, Rs.25,000/- towards disfigurement of face, Rs.4,500/- towards attendant charges, Rs.25,000/- towards shock, Rs.5,000/- towards extra nourishment, Rs.3000/- towards transportation, Rs.1000/- towards damages of clothes and Rs.25,000/- towards loss of study, which in the opinion of this Court, are just and reasonable and hence, the same need not be interfered.

8.However, having regard to the nature of the injuries and the quantum of permanent disability sustained by the first respondent/claimant, the sum of Rs.1,00,000/- awarded by the Tribunal towards pain and suffering is slightly on the higher side and hence, the same is hereby reduced to Rs.50,000/-. There is no modification with regard to the rate of interest at 7.5%pa awarded by the Tribunal.

9.In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.3,01,799/- to Rs.2,51,799/-No costs. The appellant-Insurance Company is directed to deposit the modified compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
III Additional Sub Court, Coimbatore.

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

+1 cc to M/s.M.Rajasekhar Advocate sr71874

C.M.A.No.234 of 2009

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