

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2646 of 2012

and

M.P.No.1 of 2012

M/s. Oriental Insurance Co. Ltd.,
Sankar House, No.1, RMV Extension,
Mekhri Circle,
Bangalore - 560 080

..Appellant/2nd Respondent

..Vs..

1. J.Pratheep

..1st Respondent/Petitioner

2. Sri Ganesh Transport,
No.47, 1st floor, Singasandra,
Hosur main road,
Bangalore - 560 068.

..2nd Respondent/ 1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.02.2012, in MCOP.No.341 of 2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Rasipuram.

For Appellant : Mr.M.B.Gopalan

For Respondents: Mr.C.Kulanthaivel for R1
R2 - Exparte

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JUDGMENT

The Oriental Insurance Company Limited, Bangalore is the second respondent in M.C.O.P.No. 341 of 2009, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Rasipuram. They filed the present appeal questioning the quantum of compensation awarded by the tribunal vide its order dated 06.02.2012.

2. The first respondent/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that took place on 01.05.2009, when he was travelling as a passenger in a bus bearing Registration No. TN 47 N 2749, on Namakkal - Salem road. According to him, at about 03.20 am, a speeding tempo van bearing Registration No. KA 01 C 6486 belonging to the second respondent hit the bus in which the first respondent/claimant was travelling, as a result thereof, he sustained grievous injuries all over his body. His further contention is that, the rash and negligent driving of the driver of the tempo van bearing Registration No. KA 01 C 6486 was the cause of the accident and that since the said vehicle was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

3. The owner of the said tempo van remained absent before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition. The learned Subordinate Judge, Motor Accidents Claims Tribunal, Rasipuram after analysing the evidence on records, awarded a compensation of Rs.4,05,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant.

4. Aggrieved over the quantum of compensation awarded by the tribunal, the Oriental Insurance Company Limited, Bangalore have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 .

5. Mr.M.B.Gopalan, learned counsel appearing for the appellant would contend that the tribunal has awarded an exorbitant amount of Rs.1,50,000/- towards loss of income, especially, when the first respondent/claimant did not examine his employer to prove that he was earning a sum of Rs.50,000/- per month. It is his further contention that awarding a sum of Rs.60,000/- under the head pain and sufferings is on the higher side.

6. Per contra, Mr.C.Kulanthaivel, learned counsel appearing for the first respondent/claimant would contend that the first respondent/claimant filed proof of income (Ex.P7) which would clearly show that his actual monthly income was Rs.80,000/- and that he did not receive salary for three months. His specific contention is that the first respondent/claimant was a Senior Test Engineer in Chelsio Communication Company Limited and he was a Post Graduate in Computer Applications. He has further contended that the first respondent/claimant sustained a fracture of C5 bone and sustained injuries on his brain and

therefore, the tribunal was right in awarding a sum of Rs.4,05,000/- as compensation to him.

7.A perusal of the Discharge Summary (Ex.P5) shows that the first respondent/claimant has sustained the following injuries:

“ Diagnosis : Cervical cord injury at C5-C6 level with quadriparesis and sphincter involvement (incomplete central cord syndrome)
Treatment : C3-C7 laminoplasty”

8. Dr.Mathivanan (PW2) has assessed the partial permanent disability as 45%. However, the tribunal has fixed the percentage of disability at 30% and awarded a sum of Rs.60,000/- towards partial permanent disability. As far as awarding a sum of Rs.1,50,000/- towards the loss of income is concerned, it cannot be said that, it is on the higher side, especially, when the first respondent/claimant has adduced sufficient documentary evidence to show that he was earning a sum of Rs.80,000/- per month. The award passed by the tribunal under various heads is extracted hereunder:-

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.60,000/-
2.	Pain and sufferings	Rs.60,000/-
3.	Loss of income	Rs.1,50,000/-
4.	Transportation	Rs.5,000/-
5.	Medical expenses	Rs.1,20,000/-
6.	Extra nourishment	Rs.10,000/-
Total		Rs.4,05,000/-

9. By no stretch of imagination, the award passed by the tribunal can be said to be on the higher side considering the nature of injuries sustained by the claimant and therefore, the appeal fails and it is dismissed.

10. In the result,

i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

(ii) The order passed by the tribunal is upheld.

(iii) It is brought to the notice of this Court that the entire compensation amount awarded by the tribunal was already deposited by the present appellant to the credit of MCOP.No.341 of 2009, dated 06.02.2012, on the file of the Motor Accidents Claims Tribunal, Rasipuram.

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

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Rasipuram.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.C.Kulanthaivel, Advocate, SR.No.6210

+1cc to Mr.M.B.Gopalan, Advocate, SR.No.7177

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and
M.P.No.1 of 2012

Kak (24/05/2019)

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